Chapter 6 EIS Preparers, Scoping and Review

6.1 Preparers of the EIS

This EIS was prepared under the supervision of NMFS PIRO with input from Fishery Management Action Teams (FMAT) for seabirds and squid. Participating individuals are listed below:

NMFS Headquarters: Galen Tromble and William Chappell
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The authors and sections they provided are as follows:

Paul Bartram (B.A.) Cumulative Impacts
Kathy Cousins (M.Sc.) Seabirds
Mike Downs (Ph.D.) Social Impacts
Marcus Hartley (M.S.) Economic Impacts
Kim Holland (Ph.D.) Pelagic Environment and PMUS
George Krasnick (M.S.) Project Manager, Chapters 1,2,5, Portions of Affected Environment and Impacts
Don Schug (Ph.D.) Social and Economic Analyses
Richard Young (Ph.D.) Squid

6.2 Scoping

6.2.1 The Scoping Process

Prior to conducting scoping meetings, current issues in pelagic fisheries in the region that may require management action were identified by NMFS and WPFMC staff. Ongoing litigation regarding sea turtle interactions with the Hawaii-based longline fishery was the most immediate concern, and preparation of a Pelagics SEIS and regulatory package to address that issue was initiated while scoping was being completed.

Scoping for the issue of seabird interactions in the Hawaii-based longline fishery effectively began with comments received by NMFS after publication of the 2001 Pelagics FEIS (NMFS 2001a). The American Bird Conservancy (ABC) expressed support for the closure of the shallow-set component of the fishery because it would eliminate seabird mortality in that fishery, and for requiring seabird avoidance measures for all longline vessels fishing above 23°N latitude. The ABC further recommended that paired streamer lines be mandatory rather than optional and

supported deployment of dedicated seabird observers in the fleet. They also noted the lack of discussion of the sooty shearwater, one of which was previously observed taken in the fishery.

The USFWS also commented on the treatment of the longline-seabird interaction issue in the 2001 Pelagics FEIS (NMFS 2001a), suggesting that a supplemental EIS clearly describe measures that will be employed to reduce interactions between the experimental fishery described therein (similar to the current model fishery) and protected species, including seabirds. They also had concerns about the potential introductions of alien species to NWRs from grounded vessels or unauthorized entry by fishermen.

The NOI to prepare a Pelagics SEIS (68 FR 59771) included a schedule of scoping meetings to be held throughout the region. The scoping meeting schedule and numbers of attendees are detailed in Table 6.2-1. A supplemental NOI (68 FR 67640) informed that because of the compressed timing for SEIS production mandated by a court-ordered deadline, other issues in western Pacific Ocean pelagic fisheries that might require management action would be addressed later in other NEPA documents. Thus, the scoping process provided input to more than one NEPA document, the 2004 SEIS and this EIS. Additional NEPA document(s) addressing other issues in pelagic fisheries of the region will be prepared as these issues become ripe for decision-making, i.e., when the Council begins deliberations leading to management actions.

Table 6.2-1 Scoping Meeting Schedule.

Date	Location	Number of Attendees
10/21/03	Fisherman's Wharf Restaurant, 1009 Ala Moana Blvd., Honolulu, Oahu, HI;	44
10/27/03	Chiefess Kamakahelei Middle School, 4431 Nuhou St., Lihue, Kauai, HI	5
10/28/03	Maui Beach Hotel 170 Kaahumanu Ave., Kahului, Maui, HI	4
10/29/03	University of Hawaii at Hilo Campus Center, Room 313, 200 W. Kawaili St., Hilo, Hawaii, HI	26
10/30/03	King Kamehameha Hotel, 75-5660 Palani Rd., Kailua-Kona, Hawaii, HI	4
11/6/03	Dept of Marine Resources Conference Room, Pago Pago, American Samoa	12
12/3/03	Pedro P. Tenorio Multipurpose Bldg., Susupe, Saipan	6
12/4/03	Guam Fisherman's Cooperative, Perez Marina, Hagatña, Guam.	40

6.2.2 Issues Ripe for Decision-making

Table 6.2-2 summarizes the issues raised in scoping and the evaluation of their appropriateness for inclusion in this NEPA document.

Table 6.2-2 Evaluation of Scoping Issues for Inclusion in this EIS.

Issue	Rationale for Inclusion	Rationale for Exclusion	Ripe for Decision-making	Conclusion
Sea Turtle Interactions	Most contentious issue in pelagic fisheries in the Region. Measures to minimize turtle takes may also reduce seabird interactions.	Was addressed in separate Pelagics SEIS.	Yes, a long-term management plan was submitted to the Court by April 1, 2004.	Was addressed in another NEPA document because of immediacy of need for management action.
Seabird Interactions	Establishment of the Hawaii-based model swordfish fishery raises the possibility of greatly increased seabird interaction rates for this sector of the fishery compared with the deep-set tuna sector.	None.	Yes, shallow-set swordfish fishing has been reauthorized.	Management alternatives should be addressed in this EIS.
Distant-water Squid Jigging Fishery	Importance of squid as prey to PMUS and protected species, possibility of markedly increased efforts in North Pacific Ocean, lack of NEPA assessment under the HSFCA.	Small level of current effort, lack of current effort in U.S. EEZ, lack of current landings in U.S. ports.	Yes, issuing of permits for this fishery under the HSFCA has been suspended until all NEPA and ESA requirements have been met.	Management alternatives should be addressed in this EIS.
Blue Marlin and Big Eye Tuna Stock Condition	Blue marlin and big eye tuna stocks may be nearing maximum exploitation levels. If confirmed, the Council is obliged to consider possible reduction of fishing mortality.	Fisheries operating under the Pelagics FMP take a very small proportion of these stocks and represent a very small percentage of fishing mortality. Recent SCTB stock assessments are ambiguous for big eye tuna.	No, better stock assessments will be forthcoming. However, proactive development of framework management measures that could rapidly be put into place if circumstances warrant could be appropriate.	Not an immediate priority, but the status of PMUS stocks should be carefully monitored for evidence of overfishing or overfished conditions. Council not yet ready to propose management action. Should be addressed in another NEPA document when appropriate.
Private FADs	Characterization of this fishery is not possible with existing data collection systems. The ecologic and economic interactions with other pelagic fisheries are unknown.	Characterization of this fishery will be time consuming and require the cooperation of participants. The Council is not yet prepared to recommend management action.	Yes, this may already be a major fishery in Hawaii and could develop elsewhere in the Region. May affect resource base and economics of existing regulated fisheries.	The length of time needed to produce a baseline description of this fishery would delay assessment and implementation of improved seabird interaction avoidance measures in the longline fleet. Should be addressed in another NEPA document when appropriate.

Issue	Rationale for Inclusion	Rationale for Exclusion	Ripe for Decision-making	Conclusion
Adequacy of Non-Commercial Sector Data	Good documentation of catch and effort are lacking. The WCPTC may eventually allocate resources among documented fisheries.	Various estimates are available for landings in the Region. NMFS is finalizing its strategic plan for recreational fisheries.	Yes, more and better data are needed for stock assessments. WCPTC may require records of landings for future resource allocations.	Management action should reflect NMFS' finalized strategic plan for recreational fisheries. Action likely will be contentious and could delay assessment and implementation of improved seabird interaction avoidance measures in the longline fleet. Should be addressed in another NEPA document when appropriate.
Interactions of the Hawaii-based longline fishery with false killer whales	Excessive marine mammal interactions could result in reclassification of the fishery under the MMPA. (Since scoping was completed, the fishery has been reclassified as a Category 1 fishery.)	Stock assessment data are limited. Interaction avoidance methods are being researched, but are not yet available.	Yes, environmental organizations have expressed concerns, and litigation has occurred.	Should be addressed in another NEPA document when appropriate.
Requirement for all persons aboard a commercial vessel to hold commercial fishing licenses	None.	This is a local issue in the different island groups. Crew can be "non-reporting" in Hawaii. Permits for Pelagics FMP fisheries are vessel, owner and/or operator specific.	No, island governments may have valid reasons for enumerating commercial fishermen.	Management alternatives should not be assessed in this NEPA document.
Development of domestic longline fisheries in Guam and CNMI	Placement of observers and monitoring of bycatch and protected species interactions would provide baseline data.	Would be covered under the General Longline Permit system already in place under the Pelagics FMP.	No, these fisheries are not yet operating.	Management alternatives should not be assessed in this NEPA document.
Re-define "commercial" to exclude "expense" fishermen	Completeness and accuracy of catch and effort data are compromised by those avoiding commercial requirements.	The issue is not within the jurisdiction of NMFS or the Council.	Yes, it is an ongoing issue of concern to both fishermen (because of expense implications) and fishery managers (because of data implications).	This NEPA document would not be the appropriate venue in which to evaluate this issue.
Establish a zone around CNMI closed to large bottomfish fishing vessels	Proactive move to limit competition with small, local vessels.	Is already being addressed by the Council in proposed Amendment 9 to the Pelagics FMP.	Yes, some catch competition has been experienced.	Is being addressed under the Bottomfish and Seamount Groundfish FMP.
Marine Debris	Some marine debris may be generated by Pelagics FMP fisheries.	Issue is adequately addressed in national legislation and international conventions.	Yes, marine debris is an ongoing problem, especially in the NWHI, but also in the Northern Islands of the Marianas and elsewhere.	The issue is broader than pelagics fisheries and is more appropriately considered under other auspices.

Issue	Rationale for Inclusion	Rationale for Exclusion	Ripe for Decision-making	Conclusion
Illegal foreign fishing in the U.S. EEZ	Creates catch competition with Pelagics FMP fisheries and possible localized depletion of stocks.	Enforcement by NMFS OLE and the USCG follows promulgation of regulations. Enforcement priorities are not established in a NEPA document.	Yes, this is an ongoing problem, but budgetary constraints and relative priorities may not allow perfect enforcement.	This NEPA document would not be an appropriate forum for establishing enforcement priorities.
Sales of bycatch by foreign vessels in Guam and American Samoa	Depresses prices for locally-caught fish, but also satisfies a market demand for inexpensive fish.	This is a local government issue in Guam and American Samoa.	Yes, this complaint has been heard for some time, however, local government policies supporting delivery of foreign fish to canneries or for transhipping may preclude adoption of policies more favorable to local fishermen.	This is a local government issue in Guam and American Samoa, and not an appropriate issue for consideration in this NEPA document.
Potential Alien Species Introductions by Vessel Groundings or Unauthorized Entries to NWRs	Vessels fishing under the Pelagics FMP could ground in a NWR and crew could access restricted lands.	Most NWRs are remote and are surrounded by buffer zones prohibiting entry. Vessels fishing under other FMPs (Bottomfish, Coral Reefs) may be more likely to ground or have crew access NWRs. The Pelagics FMP cannot set NWR policy.	Yes, but this issue should be done in a broader forum that considers potential introductions from all of the various sources, not just vessels fishing under the Pelagics FMP.	Regulations, requirements and prohibitions are properly established by the USFWS for the NWRs. Consideration of alien species introductions should be included in NEPA documentation and regulations for specific NWRs.

The conclusions arising from the scoping process are summarized as follows. While interactions between the Hawaii-based longline fleet and threatened and endangered species of sea turtles continue to drive litigation and management regime changes in that fishery, several other issues in pelagic fisheries of the region have emerged since the Pelagics FEIS (NMFS 2001a) that have varying degrees of "ripeness for decision-making." Alternative methods of seabird interaction avoidance have the potential to further reduce the consequences of interactions with longlines in the Hawaii fishery. Scientists and fishermen around the world have been experimenting with techniques and equipment to reduce interactions between longline gear and seabirds. Two of these approaches, side-setting and the underwater setting chute, have been used elsewhere, but only recently have they been tested in Hawaii. The results have been promising, and the WPFMC initiated an assessment of a broader range of potential seabird interaction avoidance measures for their effectiveness compared to currently required measures.

A second issue appropriate for inclusion in this EIS is development of an industrial-scale, high seas U.S. squid jigging fishery in central and western Pacific Ocean waters. An existing operation consisting of four vessels has fished at least briefly within the EEZ around Hawaii and landed product in Hawaii. As a result of a recent court decision (Turtle Island Restoration Network and Center for Biological Diversity v NMFS, D.C. No. CV-01-01706-VRW), it has been determined that each specific fishery authorized under the HSFCA must be assessed under NEPA before further permits can be issued for that fishery. As the North Pacific high seas squid

jigging fishery has not been previously assessed under NEPA, inclusion of this issue here is appropriate and timely. The Council also believes it appropriate at this time to examine alternatives for management of this fishery, as it has the potential to expand. Furthermore, with NMFS' and the Council's movement toward ecosystem-based fishery management, it is logical to consider management of squid resources because of their importance as prey species for seabirds, marine mammals, tunas, and billfish, especially swordfish. Ecosystem considerations also provide the rationale to assess alternatives for managing the existing small-scale coastal squid jig fisheries in Hawaii and those that may arise in other areas of the region.

6.2.3 Level of NEPA Analysis

The rationale for production of an EIS on these issues rather than an EA is as follows. Under CEQ regulations (40 CFR 1501.4) federal agencies are charged with developing and implementing procedures to supplement the CEQ regulations (40 CFR 1507.3). The agency's procedures should be consulted for guidance on whether to prepare an EA or an EIS. NOAA's Administrative Order 216-6, "Environmental Review Procedures for Implementing the National Environmental Policy Act," provides this guidance for NOAA actions. Section 5.01.b.1(b) of the Order requires the agency to "consider the nature and intensity of the potential environmental consequences of the action in relation to the criteria and guidance provided in this Order to determine whether the action requires an EIS, EA, or CE."

Section 6.01 states that "...EISs must be prepared for..." major Federal actions" significantly affecting the quality of the human environment." It goes on to state that "[a] significant effect includes both beneficial and adverse effects." The section further defines the key terms used in determining significance:

- "Major Federal action" includes actions with effects that may be major and which are potentially subject to NOAA's control and responsibility. "Actions include: ...new or revised agency rules, regulations, plans, policies, or procedures...."
- "Significant" requires consideration of both context and intensity. Context means that significance of an action must be analyzed with respect to society as a whole, the affected region and interests, and the locality. Both short- and long-term effects are relevant. Intensity refers to the severity of the impact. The following factors should be considered in evaluating intensity (40 CFR 1508.27):
    1. Impacts may be both beneficial and adverse –a significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial;
    2. Degree to which public health or safety is affected;
    3. Unique characteristics of the geographic area;
    4. Degree to which effects on the human environment are likely to be highly controversial;
    5. Degree to which effects are highly uncertain or involve unique or unknown risks;
    6. Degree to which the action establishes a precedent for future actions with significant effects or represents a decision in principle about a future consideration;
    7. Individually insignificant but cumulatively significant impacts;
    8. Degree to which the action adversely affects entities listed in or eligible for listing in the *National Register of Historic Places*, or may cause loss or destruction of significant scientific, cultural, or historic resources;

9. Degree to which endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973, are adversely affected;
10. Whether a violation of Federal, state, or local law for environmental protection is threatened; and
11. Whether a Federal action may result in the introduction or spread of a nonindigenous species.

- "Affecting" means will or may have an effect (40 CFR 1508.3). "Effects" include direct, indirect, or cumulative effects of an ecological, aesthetic, historic, cultural, economic, social, or health nature (40 CFR 1508.8).
- "Human environment" includes the relationship of people with the natural and physical environment. Each EA, EIS, or SEIS must discuss interrelated economic, social, and natural or physical environmental effects.

Section 6.02 provides guidance specific to fishery management actions. The guidance is in the form of a list of potential outcomes of a proposed action such that if none of the outcomes may be reasonably expected to occur, then either an EA or CE is the appropriate level of NEPA documentation. The outcomes that trigger production of an EIS are as follows:

1. The proposed action may be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action.
2. The proposed action may be reasonably expected to jeopardize the sustainability of any non-target species.
3. The proposed action may be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs.
4. The proposed action may be reasonably expected to have a substantial adverse impact on public health or safety.
5. The proposed action may be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species.
6. The proposed action may be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species.
7. The proposed action may be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.).
8. If significant social or economic impacts are interrelated with significant natural or physical environmental effects, then an EIS should discuss all of the effects on the human environment.

Section 6.02.i adds a final factor to be considered in any determination of significance, that being controversy. Although controversy alone does not create significance, it is to be weighed with the other factors in determining the appropriate level of NEPA review.

The appropriate level of NEPA documentation for the two issues under discussion, seabird interactions with pelagic fisheries of the Western Pacific Region and the pelagic squid jigging fisheries was determined by evaluating preliminary assessments of environmental consequences for the action alternatives using the significance criteria found in NOAA Order 216-6. For each alternative for each issue, possible impacts were evaluated in terms of context and intensity. The

evaluation of context does not vary with alternative for a given issue, but the evaluation of intensity does vary with alternative. Table 6.2.-3 summarizes this analyses.

Table 6.2-3 Evaluation of the Effects of Possible Management Actions for the Seabird and Squid Actions Using the Criteria of NOAA Order 216-6.

Criteria	Seabird/Longline Interactions		Pelagic Squid Jig Fisheries	
	No Action	Additional Avoidance Measures	No Action	Monitoring/ Management
Context				
Value to Society	High	High	High	High
Value to Region	Low	Low	Low	Low
Value to Locality	High	High	Low	Low
Intensity				
Beneficial or Adverse	Adverse - Low	Beneficial - Low	Adverse - Low	Adverse - Low
Public Health and Safety	Low	Low	Low	Low
Unique Characteristics of Geographic Area	High	High	High	High
Controversy	High	High	Low	Low
Uncertain or Unknown Risks	Low	Low	Low	Low
Precedent for Future Action	Low	Low	Low	Low
Cumulatively Significant	Low	Low	High	High
Historic Places, etc.	Low	Low	Low	Low
Endangered or Threatened Species	Low	Low	Low	Low
Violate Environmental Law	Low	Low	Low	Low
Introduce or Spread Non-indigenous Species	Low	Low	Low	Low

In summary, both the seabird and squid resources are highly valuable to society as a whole, and the seabird resources are valuable in Hawaii. The context of the alternative actions therefore

supports a conclusion of significance. The issue then becomes whether or not the intensity of a potential effect supports a conclusion of significance. With respect to seabirds, the potential beneficial effect of requiring additional interaction avoidance measures would be a statistically significant reduction of interactions with the Hawaii-based longline fleet. On the other hand, it could be argued that if the current level of interactions is not materially harming the status of the populations of the Laysan and black-footed albatrosses, then removing this source of mortality is not a significant benefit in population terms.

The longline and squid jigging fisheries take place in geographic areas with unique ecological characteristics, and the longline fishery affects seabird resources that are an integral part of the ecology of the NWHI. Again though, in judging significance, we must conclude that the impacts of these fisheries to those areas likely are lost in the noise of natural variability and impacts from other sources.

The degree of potential controversy, although not strictly a trigger of significance in itself, can be used as a contributing factor in weighing the decision. In the present case, the squid fisheries do not appear to be controversial, but the longline-seabird interaction issue is controversial, as evidenced by the preparation of a series of BiOp's on potential interactions of the Hawaii-based longline fleet with the endangered short-tailed albatross, imposition of a suite of seabird deterrent measures, and completion of several sea trials of seabird deterrent equipment and methodologies. In addition, in its letter commenting on the ROD for the Pelagics FEIS, the American Bird Conservancy expressed a concern about the lack of assessment in that document of the effects of the Hawaii-based longline fishery on seabirds other than albatrosses, in particular the sooty shearwater.

Perhaps the criterion arguing most persuasively for a conclusion of significance of the potential impacts of the management actions under consideration is cumulative effects. Both the seabird and the squid resources are affected by numerous natural and human-induced factors, including mortality from a host of foreign fishing operations. It is the uncertainty of the magnitude of these cumulative effects that inhibits us from putting the effects of our own fisheries into perspective. In the case of the seabird resources, if we can essentially remove the impacts of the Hawaii-based longline fleet on seabirds, we will accomplish the single most effective measure within our power to foster rebuilding of the Laysan and black-footed albatross populations, and we will also contribute to the restoration of natural ecosystems in the future NWHI National Marine Sanctuary. In the case of the squid resources, collection of CPUE, bycatch and protected species interaction data will improve our understanding of the ecological effects of the multinational fishery and move fishery management in the western Pacific region toward NMFS' goal of being ecosystem-based. For these reasons it was concluded that an EIS rather than an EA was the appropriate level of NEPA documentation to address the seabird interaction and squid fishery issues in the western Pacific region.

6.2.4 Issues Not Ripe for Decision-making

In addition to the longline-seabird interaction and squid fisheries management issues, there are several issues that were identified in scoping or are otherwise of interest to the Council that are not as urgent as these, but nevertheless may soon require assessment of management alternatives. These issues include deployment of PFADs around the Hawaiian Islands, better monitoring of

recreational catch and effort throughout the region, and the Pacific Ocean-wide condition of certain PMUS stocks. These three issues appear to be considerably more contentious than the seabird interaction avoidance or squid fishery management issues, and the Council would like to move forward more deliberately in development of management alternatives, giving stakeholders additional time in which to participate in the Council process. For this reason, these three issues were not addressed in this EIS, but will be the subjects of other NEPA documentation, as appropriate, if and when the Council decides to take action on them. With regard to longline interactions with false killer whales and the recent reclassification of the Hawaii-based longline fishery, the Council has not proposed any management action yet. Management actions to address this issue may require NEPA analysis in the near future. Development of the domestic longline fishery in the Mariana Islands may require management action at some future date, but the fishery does not exist at present, despite there being two General Longline Permits issued in 2003 (PIRO unpub. data). None of the other issues identified in scoping appear appropriate for NEPA analysis and management action under the Pelagics FMP at this time.

6.3 Distribution of the DEIS

Individuals, agencies and organizations listed below were provided copies of the DEIS. Persons submitting written comments on the DEIS are identified below with a single asterisk (*), and those providing oral testimony at a Public Hearing are identified below with a double asterisk (**).

Last Name	First Name	Affiliation
Aasted	Bryan	Black Magic LLC
Aasted	Donald C.	(trustee living trust)
Achitoff	Paul	Earthjustice Legal Defense Fund, Mid-Pacific Region
Adams	Tim	Marine Resources Division, Secretariat of the Pacific Community BPD5
Administrator		Department of Land & Natural Resources
Administrator		Office of Hawaiian Affairs
Agard	Louis	
Agcioe	Joseph	
Aguiar	Dennis	
Aila	William	
Aitaoto	Fini	Site Coordinator, American Samoa
Alig	Frank	
Allen	Laurie K.	NMFS, Office of Protected Resources
Alofaituli	Letalitonu	
Alvarez	Dale	Civil Service
Amesbury	Judith	Micronesian Archeological Research Services
Anderson	James	
Anjo	Anthony	
April	Victoriano	
Arakaki	Edward	
Arboleda	Juliana	

Last Name	First Name	Affiliation
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Atualevao	Asifoa	
B	Alohilani	RCUH
Bakic	Preston M.	
Balton	David	Director Off. Mar. Con., U.S. Department of State, Bureau of Environmental & Scientific Affairs
Barcenilla	Roland	Co-op
Barefoot	Jordon	
Barja	James	AP
Barrows	Scott	Fishrite Inc.
Bartram	Paul	Akala Products Inc.
Bartram	Paul	Hawaii Seafood Distributors
Basargin	Natalia and Kiril	
Bass	Jamie	Dept. of Agriculture (DAWR)
Bator	Bommie	
Bauer	Jennifer	Westpac AP
Beals	Gary	
Bean	Michael J.	Chair, Wildlife Program, Environmental Defense
Becker	Elizabeth	TEC
Beebe	Bill	
Beeching	Tony	Western Pacific Regional Fishery Management Council
Bell	Eric	Co-op
Birkeland	Charles	Hawaii Cooperative Fishery Research Unit
Blaine	Davis	Office of Planning DBEBT
Boggs	Christofer	NMFS Pacific Islands Fisheries Science Center
Borja	James	
Borresen	Yvonne	Defenders of Wildlife
Bradford	William	AP
Brandt	G	Lyons, Brandt, Cook, & Hiramatsu
Bright	Jody	Tropidilla Productions, Honolulu HI
Broadway	Megan	
Brock	Richard	University of Hawaii Sea Grant
Brown	Steve	Co-op
Bucehard	John	
Buck	Mike	KHVH
Burgess	Puanani	
Burney	David	U.S. Tuna Foundation
Cabos	Robert	
Cabrera	Jesus	
Cabreza	Roberto	
Caldwell	Hamilton	
Callaghan	Paul	University of Guam
Calvo	John	Guam On-site Coordinator
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Camhi	Merry	
Campbell	Laura	UHH MOP Program/JIMAR Sea Turtle Strandings Response

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Chappell	William	NMFS
Chargualaf	Edward W.	Co-op
Chase	Lida	WesPac Ecosystem Sub-advisory
Choi	Yoo Hai	Ohana Fishing LLC
Christensen	Ross	
Chu		Princess K Fishing Corp.
Clark	Dolores	NOAA/National Weather Service NOAA Public Affairs
**Cook	James	President, Pacific Ocean Producers
Crabtree	Frank	Crabtree, Frank & Michelle
Craig	Peter	National Park of American Samoa
Crain	Ed	
Crivello III	Frank	Crivello Fishing LLC
Crook	Michael	
Crowder	Larry	Professor of Nicholas School of the Environment, Duke University Marine Laboratory
Cruz	Al	Co-op
Cruz	Alfanacio	
Cruz	John	Co-op
*Cummings	Brendan	Attorney, Center for Biological Diversity
Cummisky	Margaret	Office of Senator Inouye
Curren	Flinn	
Dacanay	Mike	Co-op
Dahl	Christopher	
Dang	Minh H.	Dang Fishery Inc.
Dang	Minh H.	Pacific Fishing & Supply
Dang	Sidney	Lady Ann Margaret Inc.
DaRosa	Larry	
Daxboeck	Charles	BioDax Consulting, Tahiti
Debeyorse	Ray	Co-op
DeCosta	Gilbert	
Dela Cruz	Warren	
Deleon	Allen	MCN.COR. KAIBU III
Deleon Guerrero	Edward	Northern Islands Mayor's Office
Denolfo	Louie	Fisheries Council
DeRego	Mike	
Deriso	Rick	Tuna-Billfish Program Inter-American Tropical Tuna Commission
Devick	William	Administrator, Hawaii Division of Aquatic Resources
Dewenter	David	

Last Name	First Name	Affiliation
Dick	Shawn	President, Aquatic Release Conservation
Director		Department of Business, Economic Development, & Tourism
Director		Office of Environmental Quality Control
Director		Waikiki Aquarium
Director		Fish and Wildlife Service
Director		State Department of Health
Divine	Rusty	TEC Infodex
Do	Quan	
Donnelly	Marydele	Scientist and Sierra B. Weaver, Program Counsel, The Ocean Conservancy
Donohue	Mary	University of Hawaii Sea Grant
Downs	Michael	EDAW
Draheim	Shanna W	U.S. Environmental Protection Agency, Region 9
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Driscoll	Mike	Co-op
Duenas	Chris	
Duenas	Manny	Guam Fishermans Cooperative
Duenas	Michael P.	Co-op
Duong	Alan	
Dutton	Peter	NMFS, Southwest Fisheries Science Center
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Eads	John	Co-op
Easley	Amanda	
Ebisui	Edwin	
Eckert	Scott	Senior Res.Biol., Hubbs-Sea World Research Institute
Edwards	Dana	Guam Legislature
Eldridge	Gary	
Endreson	Robert	
Engebretson	Monica	
Environment Hawaii		
Environmental Center		
EnviroWatch, Inc.		
Eseroma	Lefanoga	
Everett	William	Endangered Species Recovery Council
Faasau	Andrew	Samoa News
Falig	Mariano	F/V II Sin Ho
Farm Jr.	Frank	Administrator, Hyperbaric Treatment Center
Farrell	Timothy	O'Connor, Berman, Dotts, and Banes
Feder	Judson	General Counsel, NOAA General Counsel
Fee	David	Star Polaris Fisheries Inc
Feliciano	Ralph	
Fiero	Jack	Astara Co. LLC
Filiaga	Judy	

Last Name	First Name	Affiliation
Fisk	Shirely	Office of Senator Akaka
Fithian	Peter	
Fleming	Michael	
Flint	Beth	Wildlife Biologist, U.S. Fish and Wildlife Service
Flores	Julian	Co-op
Flores Jr.	Tom	Dept. of Agriculture (DAWR)
Flournoy	Peter	International Law Offices of San Diego
Fogarty	Judith	Special Agent in Charge, NMFS Office of Law Enforcement
Fontana	Christina	
Franulovich	Tony and Lorna	
Freedman	Carl	Blue Ocean Preservation Society
Freifeld	Holly	U.S. Fish and Wildlife Service
Friedlander	Alan	The Oceanic Institute
Friesma	Paul	Environmental Policy Program
Funderburg	Clint	Bethel Inc.
Furuno	Alan	Congressman Abercrombie's Office
Gaffney	Rick	Rick Gaffney & Associates
Gales	Rosemary	Nature Conservation Branch, DPIWE
Gallimore	Captain Richard	Finest Kind Marine Distributors, Inc
Gallimore	Richard J.	Aquanut Co. Inc.
Garrido	Jose	
Gawel	Mike	Administrator, Guam Bureau of Statistics and Plans
Ghigliotty	David and Dianna	Seeker Fisheries Inc.
Gibbons-Fly	William	U.S. Dept. of State, Bureau of Oceans & International, Environment & Scientific Affairs
Gibbs	John	
Gilman	Eric	
Gilmartin	William	Hawaii Wildlife Fund
Goto	Frank	General Manager, United Fishing Agency
Gourley	John	
Govindan	Jay S.	U.S. Dept. of Justice, - ENRD/WMRS
Graessle	Ward	Offshore Marine Surveyors
Grasso	Tam	World Wildlife Fund
Gray	Tim	Kuu Huapala
Greenpeace Foundation of Hawaii		
Grigg	Richard	University of Hawaii Institute of Marine Biology
Guam National Wildlife Refuge		
Guerrero	Miki Leon	
Gumataotao	Agustin	Co-op/Westpac AP
Gushiken	John	
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Haleck	Stephen	

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Hansel	John	NMFS, NEPA HQ
Hanson	Richard L.	Hanson Fishing Co.
Harp	Issac	
Harris	Dot	Department of Commerce, Gov. of Guam
Harrison	Craig S.	Vice Chair for Conservation, Pacific Seabird Group
Hartley	Marcus	Northern Economics
Hawaii State Department of Health		
Haworth	Arthur and Barbara	
Hee	Ui	
Heikkila	Wayne	
Heppell	Selina	NHEERL Postdoc. Fellow, U.S. Environmental Protection Agency NHEERL Western Ecology Division
Hiura	Harris	
Ho	Bryan Y.Y.	Pacific Seafoods Inc.
Hoang	Andy	
Hoang	Anthony	U.S. Department of Justice
Hoang	Dennis	High-Sea Hawaii Fishing Supply
Hoang	Tina	Nguyen, Ho Son/Hoang, Tina
Holland	Kim	
Hollister	William	
Holzman	Greg	
Honolulu Star Bulletin		
House Resources Subcommitte on Fisheries Conservation, Wildlife and Oceans		
House Resources Subcommitte on Fisheries Conservation, Wildlife and Oceans		
Hubberd	Lela M.	
Hudson	Charlotte Gray	Marine Wildlife Scientist, and Eric A. Bilsky, Senior Attorney, Oceana
Huynh	Calvin	Queen Diamond Inc.
Huynh	Tuan	Capt. Millions III, Inc.
Hwang	James W.	DukSung Fishing Inc.
Hwang	Justin	Jong Ik Fishing Co. Inc.
Inakoshi	Kazu	
Inouye	Jed	Seafood Hawaii
Itibus	Pedro	
Jackson	Phillip	
Jackson Bay Co.		F/V PACIFICA
Jacobs	Lyn	U.S. Department of Justice

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Jessop	Aaron	
Jin	c/o Charlene	Moon, Kil Cho
Johnson	Bruce	Fresh Island Fish
Johnson	Damon	
Johnson	Dane	Island Girl
Jones	Andrew	
Jong	Han	Blue Sky Fishing Producer
Kajihiro	Kule	
Kalthoff	David	Aikane 49
Kamezaki	Naoki	Sea Turtle Assoc. of Japan Dept. of Ecosystem Studies Unv. Of Tokyo
Kamikawa	Dennis	
Kaneko	John	Pacific Management Resources, Inc
Kanemoto	Neil	
Kanuha	Clement	Reef Advisory Board
Kaufman	Gregory	President, Pacific Whale Foundation
Keaulani	Bruce	
Kelly	Marion	
Killian	Brenday	Executive Director, Earth Island Institute/International Monitoring Program
Kim	Chan Son	
Kim	Hwa Deog	
Kim	James Chan Song	Ulheelani Corp.
Kim	Kyong Dok	
Kim	Kyung Sook	Aegis Fishing Inc.
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Kitazaki	Garret	Diamond Head Seafood Wholesale, Inc.
Kokkinakis	Steve	NOAA/Ofc Strategic Planning
Kraft	Tom	
Krasnick	George	TEC
Krown	Steven	
Kusano	Jean	UH-Hamilton Library Gifts and Exchange Dept
LaGrange	John	Trans World Marine Inc.
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Lau	Hamsely	
Lau	Henry	
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Lindgren	Peter	Lindgren-Pitman, Inc.
Loftesnes	Michael	VP, Pago Pago Dive Club
Longnecker	Andrew	Sylvan Seafoods Inc.
Louis	Henry	
Lu	Kim	RBKL Inc.
Lu	Liet An	Lu, Liet An /Do, Mai Thi
Ludwig	Sabina	
Lugo	Martin	
Lujan	Isabel	Department of Commerce
Lujan	Rufo	Acting Chairman, Organization of People for Indigenous People
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Martin	Sean	Pacific Ocean Producers
Martin	Tim	Martin Noel Inc.
Martin	Sean	President, Hawaii Longline Association
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Maslowe	Julie	
Masumu	Wesley	
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Mawae	James Keliipio	
Maxwell	Charles	
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Mossman	William	
Muffet	William Carroll	Defenders of Wildlife
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Nguyen	Duoc	
Nguyen	Hanh Thi	H and M Fishery Inc.
Nguyen	Hanh Thi	N. Pac. Fishery Inc.
Nguyen	Ho Son	Davis B Inc.
Nguyen	Jimmy	Capt. Washington I Inc.
Nguyen	Jimmy	Vui Vui II Inc.
Nguyen	Kim Thi	
Nguyen	Long Thanh	Sea Dragon II Inc.
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Niles	Dennis	
O'Brian	Jerry	
O'Brien	Marie Teresa	Univ. of Guam
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Ohai	Leo	
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Oldenburg	Leland	
Oliver	Chuck	SWFSC
O'Neill	Heather	Turner Original Production
Ortiz	Paul	NOAA General Counsel, Enforcement and Litigation
Oshiro	Ryan	
Ostendorp	Michael	Nguyen, Si Tan/Ostendorp, Michael
Otaguro	S	Lyons, Brandt, Cook, & Hiramatsu
Oyama	Mark	
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Peelman	David	USCG
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Pelensky	Zonia	
Perez	Ben	Co-op
Perez	Jerry	
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Pham	Nick Van	
Phan	Stephan	Sea Flower Inc.
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Rudeen	Amber	
Ryder	Kawehi	
S.	Mitchell	
S.T.	Richard	
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Sagapolutele	Telefoni	
Samiere	Wayne	President, Honolulu Fish, Co.
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Sanafea	Fatima	
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Silvers	Rodger	
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Smith	Jeffery D.	Sierra Fisheries Inc.
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Sorba	Frank	
Spotila	James R.	Drexel University
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Sprtel	Frank	NMFS, HQ
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Stevenson	Paul	South Pacific Resources
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Taman	Jerry	
Tamashiko	Guy	
Tamashiro	Richard	
Tanner	CJ	
Tanoue	Glen	President, Tropic Fish & Vegetable Center
Taube	Vanesa	
Taula		Phillip
Taylor	Casey	
Taylor	Larry	
Tedtaotao	Melissa	
Tenorio	Dr. Joaquin	Department of Natural Resources
Terlaiea	Anthony	
Thomas	Bill	Manager, National Ocean Service Pacific Region Headquarters
Thompson	Paul	
Tiapula	Mataio	
Timoney	Sean	
Timoney	Timm	
Timoteo	Uelese	
Tinkham	Stetson	U.S. Department of State
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Torricer	Leonard	West Hawaii Fisheries Council
Tran	Christine	
Tran	Kim	
Tran	Tony	
Tromble	Galen	NMFS
Truong	Quy Thanh	
Tulafono	Raymond	Director, DMWR-American Samoa Govt
Tummons	Pat	Environment Hawaii
Um	Howard	Hawaii Fishing Co.
Vaiagae	Jimmy	
Vaiau	Steve	
Vaivai	Taufuiava	
Van	Kevin	Sea Diamond II Inc.
Van	Lan Thi	
Van Dear Veur	Jennifer	
Vawter	William	
Villagomez	Joaquin	
Vinson	Sherry	Pacboat LLC
Vunisea	Aliti	S.P.C.
Waldon	Gary	Mid Pac Fisheries
Walsh	Cecile	
Walsten	Arlin	
Wanley	Tom	Office of Rep Abercrombie
Watson	Ellen	
Weaver	Gene	

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Webster	Thomas	
Wheeler	Steve	Aikane 49
Whitcraft	Sam	Ocean Resource Manager, Kahoolawe Island Reserve Commission
White	Rick	
Widing	Leland	Gunn, Daniel; Widing, William
Widing	Leland	Gunn Pacific Reflection
Williams	William C.	Bayshore Mgmt. Inc.
Wills	Katie	
Wilson	Bob	U.S. Coast Guard Law Enforcement & Intelligence
Wiltse	Wendy	EPA/PICO
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Winter	Kawika	UH Environmental Action Group
Wittshiebe	Claire	
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Yamasaki	Gordon	NMFS
Yamauchi	Keven	
Yee	Wadsworth	
Yi	Roy	
Young	Peter	Hawaii Dept. of Land & Natural Resources
Young	Richard	
Ziegler	Majorie	Executive Director, Conservation Council for Hawaii
Ziegler	Majorie	Program Assistant/Communications, KAHEA
	Stephanie	
	Stephen	
		Adelita Fishing LLC
		Aiga Ma Uo LLC
		American Workboats Inc.
		Amko Fishing Co. Inc.
		Ao Shibi Inc.
		Arrow Inc.
		Awahnee Oceanics Inc.
		B-52 Inc.
		Barbara H Inc.
		Faivaimoana Fishing Co Lt
		Feli Fisheries Inc.
		Firebird Fishing Corp.
		Gunn Sea Venture LLC
		H & Lee Inc.
		Harbor Refuse & Environm
		Hawaiian Fishing Inc. Ltd

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		Heola Inc.
		Independence Inc.
		Island Tuna Mgmt. Inc.
		Ji Hyun Inc.
		K.A. Fishing Co. Inc.
		Ka'upu Ltd.
		Kim Fishing Co.
		Konam Fishing Co., Inc.
		Kuku Fishing Inc.
		KYL Inc.
		Le, Nga Van
		Le, Tom The Van
		Letalitonu Alofaituli
		Longline Services inc.
		M.S. Honolulu Inc.
		Maria J Fishing Inc
		Mee Won Inc.
		Miss Lisa Inc.
		Native Resources Developer
		Ocean Associates Corp.
		Offshore Adventures Inc.
		Pacific Jennings Inc.
		Palmer Pedersen Fisheries
		Port Lynch Inc.
		Quality Tuna Co.
		Samoa Enterprises Inc.
		Sea Flower Inc.
		Silva Fishing Inc.
		Song Fishing Corp.
		THK Fishing Inc.
		Tracey C Fishing LLC
		Tuna Ventures Inc.
		Two Bulls Inc.
		Universal Fishing Co.
		Wearefish Inc.
		Wynne Inc.

6.4 Comments on the DEIS

The availability of the DEIS was noticed in the *Federal Register* on August 27, 2004 (69 FR 52668). Comments received and responses thereto are summarized in the following table. Copies of the letters received may be found in Appendix E.

Table 6.3-1 Responses to Comments on the DEIS.

Comment #	Date	From	Issue #	Issue	Response
1	10/8/204	Kitty Simonds, Western Pacific Fishery Management Council	a	Albatross population trends Sections 3.6.1.1.2 and 3.6.1.1.3 on the population trends for Blackfooted (BFAL) and Laysan (LAAL) albatrosses contain the same egregious errors resulting from the inappropriate use of regression analyses for nesting abundance data for both these seabirds in the Northwestern Hawaiian Islands (NWHI). Information on time series of estimates are presented separately for breeding pairs of BFAL at French Frigate Shoals (FFS), Midway Atoll and Laysan Island in Figure 3.6.1-2 and then combined in Figure 3.6.1-3, to which a regression line is fitted. The same type of analysis is conducted for LAAL in figures 3.6.1-4 and 3.6.1-5. As noted in the figures the individual time series were derived by different methods, direct counts for Midway and FFS and extrapolated plot counts of eggs for Laysan Island. As the figure for BFAL at Laysan Island time series shows, there are wide confidence intervals around these estimates, particularly in the early part of the time series which, being the largest numbers of birds, drives any trend in the data. The Council believes it is statistically and scientifically invalid to simply combine these data and then fit a non-significant regression line ($p > 0, 1$) from which a spurious conclusion is drawn about a putative 1% declining trend in the nesting population.	The regression analyses were deleted and replaced with qualitative analysis of population trends for Laysan and black-footed albatross. These analyses were supplemented with additional observational data from other areas of the Pacific Ocean. There is currently some controversy about the population trajectories for these species. Several studies are currently underway that may clarify this situation.
1	10/8/2004	Kitty Simonds, Western Pacific Fishery Management Council	b	Moreover, there appears no attempt to synthesize these observations with those for the short-tail albatross which is clearly showing explosive exponential growth, despite the fact that its chief nesting site is located within an area of the North Pacific fished intensively by longline and squid vessels. Moreover, the short-tailed albatross population increase overlaps with the growth of longline fishing in the Pacific Ocean, which has clearly has not had no retarding effect on this albatross.	Additional short-tailed albatross population and distribution information has been added, as has a discussion of the population increase in relation to multinational longlining effort across its range.
1	10/8/2004	Kitty Simonds, Western	c	It should also be noted that although several efforts to model both the LAAL and BF AL populations are currently	None of the current modeling efforts alluded to have published any results to date. The

Comment #	Date	From	Issue #	Issue	Response
		Pacific Fishery Management Council		underway (supported by the University of Hawaii's Pelagic Fisheries Research Program), no reference is made to these nor any preliminary results incorporated. Moreover, reference to a recent paper on the impacts of longline fishing on BFAL is missing entirely. (Rebecca L. Lewison and Larry B. Crowder, Estimating Fishery Bycatch and Effects on a Vulnerable Seabird Population, Ecological Applications 13(3); fig. 6 at 750 (2003)).	investigators were contacted to determine if any preliminary results could be released, but none were. A discussion of the Lewison and Crowder paper was added.
1	10/8/2004	Kitty Simonds, Western Pacific Fishery Management Council	d	Impacts of the alternatives The best that can be said about Section 4.5, Impacts to Seabirds, is that it does at least make an attempt at gauging the likely numbers of seabirds that might be caught using different mitigation measures and area of application. That said, there are some serious problems with the analyses, in particular, some numbers appear to be plucked out of the air, while other are not computed when they should be. Page 212 presents interaction rates with both albatrosses combined for shallow and deep sets made by Hawaii longline (HLL) vessels between 1994 and 1999. On page 213 the DEIS provides a worked example to show how with 2,120 shallow swordfish sets, a base line total of 1,300 seabirds would be expected to be caught. The text then goes on to show the impact of night-setting on the interactions resulting in a 73-98 % reduction or 26- 321 albatrosses. Our calculations show the range to be 26-351 albatrosses, why is there a discrepancy in the upper bound (1300 x 0.27 = 351)?	A subcommittee of the Fishery Management Action Team (FMAT), which included several members of the Council staff, extensively revised Section 4.5, including addition of a quantitative comparison of the potential numbers of seabirds hooked under given assumptions for each alternative. In addition, interaction rates for shallow and deep sets both north and south of 23°N were generated by PIFSC staff, and used in the quantitative analyses.

Comment #	Date	From	Issue #	Issue	Response
				Moreover, why is there not a worked example to establish a baseline total for deep tuna sets? Such a figure could be readily computed by subtracting 2,120 sets from the recent annual set total for the HLL fishery (14,200 sets), yielding about 12,000 sets, times the interactions rate = 144 takes. No such estimate is made, and instead we are presented in the last paragraph on page 213 with a scenario where it is assumed that none of the current, highly effective methods that are in place actually work, resulting in 1,300 birds captured by shallow swordfish sets and 500 birds by tuna sets. Where does this 500 bird figure come from? The text gives the impression it was simply plucked out of the air. The following sections attempt to provide impacts of the various mitigation measure combinations. However, they continue to repeat the canard that in the event that current measures would serve no purpose, almost 2,000 albatross would be captured each year, should no additional measure such as side setting be introduced. This is a very poor piece of work. Quite apart from the sloppy arithmetic and unfounded assumptions, there is no attempt to look at interactions as they occur above 23 deg N latitude as compared to all areas fished by the HLL fleet, as differentiated in virtually all of the DEIS alternatives. Such an analysis is crucial to reaching a cost-effective solution balancing the needs for seabird conservation versus the costs to the HLL fleet, yet it is absent from this DEIS.	
1	10/8/2004	Kitty Simonds, Western Pacific Fishery Management Council	e	Conclusions NMFS should not publish a final EIS until these issues have been addressed. At present the Council believes that the sections referred to above require a substantial overhaul and re-draft to make them acceptable for publication.	The sections above have been substantially revised, as noted above.
2	10/11/2004	Elizabeth Ann Mitchell	a	I'm dismayed that the final day for comments regarding this DEIS comes only two days before the Western Pacific Regional Fishery Management Council (WPRFMC) takes final action at the October 12-15 Council meeting on the seabird regulations. I would normally be encouraged at the swift action but the Council's preferred alternative for seabird mitigation in this DEIS is ineffective, as it allows vessels to	The Council took preliminary action at its previous meeting where the alternatives were discussed. The comment period for the DEIS was coordinated with the Council schedule to ensure that the Council had all public comments in hand before its final deliberations. The public comment period was

Comment #	Date	From	Issue #	Issue	Response
				revert back to the current measures. NMFS' annual seabird report (2003) acknowledges that, "the suspension of swordfish vessels operating north of the Equator and/or other characteristics associated with swordfish style fishing may be the primary influence on low interaction rates of albatrosses with the Hawaii-based pelagic longline fishery and not the required deterrent measures." Key industry representatives co-authored a successful mitigation study (Gilman et al 2003) involving the use of side-setting, which, when used with adequate line weighting (60 g per branch line) and a "bird curtain", can reduce albatross takes by as much as 100%. As a tax payer funding this study, I am appalled that, even when equipped with multi-year research conclusions, the Council is preferring to ignore it's own science and allow vessels to revert back to prior ineffective, unenforceable measures. What is the point of mitigation research if we're not going to employ the results?	not shortened to accommodate the Council schedule. After thoroughly considering all comments received from the public as well as those from the FMAT, the Council's SSC and other sources, the Council developed a new Preferred Alternative which represents a significant revision of its Preliminary Preferred Alternative, which appeared in the DEIS. The intent of the new alternative is to actively encourage the use of side-setting by requiring additional interaction avoidance measures over and above those included in current measures, if an operator chooses not to side-set. It should be clarified that the currently required interaction avoidance measures are neither ineffective nor unenforceable.
2	10/11/2004	Elizabeth Ann Mitchell	b	NMFS and the Councils have encouraged the movement of the U.S. longline fishery from the Atlantic to Hawaii, from Hawaii to California and back to Hawaii without coordinating Council jurisdictional implementation of CMs. When closures were implemented for "Hawaii-based" longliners under the WPRFMC jurisdiction (NMFS 2000), NMFS allowed the same vessels to fish the newly closed areas off the U.S. west coast under PFMC jurisdiction without any regulations. This had the effect of cancelling out any CM benefits implemented by the closures/monitoring requirements.	NMFS and the Councils have developed and continue to develop plans and regulations as necessary to minimize the effects of fishing activities on protected species. Interactions of Laysan and black-footed albatross with U.S. pelagic longline vessels are most numerous near the Northwestern Hawaiian Islands, and thus Hawaii-based vessels are subject to the most stringent regulatory requirements for use of seabird interaction avoidance measures. It is expected that these requirements will be increased, in effectiveness if not in number, as a result of the proposed action. It should also be noted that the Western Pacific and the Pacific Councils have begun planning for better coordination through joint Council and SSC meetings.
2	10/11/2004	Elizabeth Ann Mitchell	c	When an observer program was finally mandated for "California-based" swordfish longliners, high albatross and turtle bycatch was documented, just as it was in Hawaii. Still, there were delays for the closure of the California-based longline fishery until the expiration of the Hawaii-based	General permitted longliners currently fish from American Samoa, but not from either Guam or the Northern Mariana Islands. The scoping process for this document identified no problems with protected species

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				swordfish longline closure (NMFS 2004a, NMFS 2004b), now allowing them to move back to Hawaii. Meanwhile general permitted U.S. longline fishermen are operating in other areas of the Pacific under WPRFMC jurisdiction (including the Territory of American Samoa, Territory of Guam, Commonwealth of Northern Mariana Islands and the U.S. possessions of Johnston and Midway Atolls, Kingman Reef and Palmyra, Jarvis, Howland, Baker and Wake Islands) without any monitoring of their impacts on endangered species.	interactions in fisheries in the region except for the Hawaii-based longline fishery. Limited observer coverage in the American Samoa-based fleet has not documented interactions with protected species. Planning is underway for a permanent observer program in American Samoa.
2	10/11/2004	Elizabeth Ann Mitchell	d	NMFS has been very busy in the last 5 years dealing with lawsuites (4 in Hawaii and 1 in California) being forced into complying with environmental laws surrounding the management of the "Hawaii-based" and "California-based" swordfish and tuna longline fisheries. The litigation resulted from significant delays in recognizing the damaging impacts on protected species as revealed in five years of observer data, primarily in the swordfish fleet. Public funding directed toward this relatively insignificant fishery have amounted to millions of dollars, not including the public funds involved in the collaboration of NMFS, the Councils and other nations regarding the development of pelagic longline fisheries outside U.S. waters. Most of the attention in regulation of these fisheries have concerned sea turtle takes. Since there has never been an Environmental Impact Statement completed for the impacts of these fisheries on seabirds and since prior activity of these vessels in both Council jurisdictions have resulted in high albatross takes, NMFS should not reopen the Hawaii-based swordfish fishery until the EIS process is complete and effective seabird mitigation measures are required. The EIS should also include the impacts of the Hawaii-based tuna fishery and general permitted longline fishing of all U.S. longline fleets operatiing under both Council jurisdictions.	A proposed action analyzed in this EIS is further regulation of the Hawaii-based longline fleet to minimize interactions with seabirds. The action and its alternatives were proposed by the Western Pacific Council, which does not have authority over California-based vessels. Since 2000, the Hawaii-based fleet has been subject to regulations promulgated to implement the Terms and Conditions of a series of Biological Opinions of the USFWS. These Biological Opinions addressed the impact of the fleet on the short-tailed albatross, but due to the similarities in distribution and feeding ecology with the Laysan and black-footed albatross, regulations intended to protect the short-tailed albatross also protect the other albatross species. Terms and Conditions included in a Biological Opinion are non-discretionary actions required to be implemented by regulation, and thus have the force of law. While NEPA documents support decision-making by analyzing alternatives to an action, they have no intrinsic regulatory force. Please note that potential seabird interactions in the reauthorized swordfish fishery were assessed in the 2004 SEIS and appropriate seabird interaction avoidance measures identified previously for the fleet,

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					were instituted for the model swordfish fishery.
2	10/11/2004	Elizabeth Ann Mitchell	e	Three research studies have tested the effectiveness of blue-dyed bait, night-setting, setting with an underwater chute, strategic offal discharge, side setting and setting with a line-shooter (Boggs 2001, McNamara et al 1999, Gilman et al 2003). The single most effective measure found for both tuna and swordfish vessels was the use of side setting (Gilman et al 2003). Yet the Council's "preferred alternative" only implements this measure as an option, allowing vessels to return to the current measures, which are no more than what the fleet has historically practiced (with the exception of offal discharge and blue-dyed bait, which are unenforceable.	The Preferred Alternative in the FEIS would require use of more interaction avoidance measures than did the Preliminary Preferred Alternative in the DEIS, unless an operator opted to use side-setting. This is intended to encourage the use of side-setting. The USFWS's 2004 Biological Opinion for the shallow-set sector of the fishery requires the phasing in of side-setting or of measures equal or greater in effectiveness in deterring interactions in the Hawaii-based fleet. Note that this sector of the fleet, which historically had higher levels of seabird interactions than the deep-set sector, will have 100% observer coverage. While observers are not agents of enforcement per se, their post-trip reports are reviewed by enforcement agents and trigger follow up investigations when required.
2	10/11/2004	Elizabeth Ann Mitchell	f	Strategic Offal Discharge Strategic offal has not been proven to be effective as an overall deterrent and there are some continuous studies that correlate the presence of offal with increased seabird abundance and have inferred that this may be directly related to an increase in seabird bycatch (Gilman, et al 2003; C.J.R. Robertson et al 2003, 2004).	NMFS and the Council are aware of this, and that other jurisdictions discourage offal discard for these reasons. The USFWS believes strategic offal discard to have seabird interaction avoidance properties, but that it should be employed only when birds are already present. The Preferred Alternative in this FEIS has been modified from that in the DEIS to reflect the USFWS position.
2	10/11/2004	Elizabeth Ann Mitchell	g	Swordfish fishing effort is often times concentrated during the full moon, which, unless there is complete cloud coverage, can increase visibility and access of seabirds to baited hooks. Even in dark skies, swordfish fishing employs the use of light sticks which could possibly be a visual cue to albatrosses. In addition, the current regulations stipulate that night-setting begin no earlier than one hour after sunset and finish by sunrise. Yet the USFWS 2000 short-tailed albatross Biological Opinion (USFWS 2000) stipulates that vessels	Night setting has been shown to have high efficacy in reducing longline-seabird interactions. The 2004 Biological Opinion of the USFWS for the shallow set sector of the Hawaii-based fishery requires that setting be completed before sunrise.

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				finish setting one hour before sunrise. Albatrosses exhibit increased foraging and feeding activity during twilight hours, so night-sets should finish at least one hour before sunrise.	
2	10/11/2004	Elizabeth Ann Mitchell	h	Line Weighting In both studies by Boggs (2001) and Gilman, et al (2003), 60 g weights were attached to branch lines. Yet the current measures insist on 45 g weights just because it's what the fleet is already using and therefore isn't really a mitigation measure. While it has been acknowledged that tuna fishing generally has less bycatch than swordfish fishing based on the dramatic drop in bycatch after the elimination of swordfish sets in the data, one should consider that the bycatch rates may be underestimated for both fisheries because of drop-offs, predation or the observer not watching every hook.	According to industry representatives, about 70% of the fleet now uses 60 g weights. The specifications for side-setting outlined in the USFWS's 2004 Biological Opinion and used in this EIS include use of 60 g weights. As side-setting is phased in, use of 45 g weights will disappear.
2	10/11/2004	Elizabeth Ann Mitchell	i	Current Bycatch Rates are Underestimated Myself and other observers in the HLOP raised this concern with supervisory staff in 1994 but the discussion went no further. I have subsequently questioned observer program staff about this and, to my knowledge, crew members are not yet required to stop hauling the line during observer breaks or while the observer is on deck obtaining biological samples. In addition, seabird bycatch is recorded in three categories-live, dead and injured, with bycatch rates only reflecting the dead specimens. There is no estimate for the survival of injured birds. Most certainly if a wing is broken during hauling the bird will not survive. For these reasons, the bycatch rates in both the tuna and swordfish fisheries could be substantially higher than reported.	NMFS and the Council are aware of this. The Biological Opinion for the reopened swordfish fishery (USFWS 2004a) provides a revised procedure for making seabird abundance and interaction estimates, and encourages continuation of research into such issues as survivability of injured birds and the drop-off rate of hooked birds.
2	10/11/2004	Elizabeth Ann Mitchell	j	Consider overall impacts of this decision Pacific wide While swordfish fishing as currently practiced has been shown to be highly destructive to seabirds, tuna fishing is more widespread throughout the Pacific and the overall impacts, even with a low bycatch rate per vessel, could actually have substantial impacts Pacific-wide. For this reason, we should strive to implement the most effective measure. Key Council members have high financial stakes both in the swordfish and tuna longline fisheries throughout the Pacific, both nationally and internationally, either through direct fishing activity or in longline gear manufacture and	The Biological Opinion for the reopened swordfish fishery (USFWS 2004a) encourages NMFS to continue its outreach to Japan, Korea, Taiwan and other distant-water fishing nations regarding seabird bycatch rates and interaction avoidance measures. If the operational benefits of side-setting can be clearly demonstrated in the Hawaii fleet, foreign fleets will be much more likely to adopt this measure in their own fleets.

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				supply. They have also co-authored the latest study on side setting (Gilman et al 2003) so are highly equipped to have a positive influence on other nations' pelagic longline practices. Since NMFS already has fishery advisory relations with other swordfish fishing nations, such as Mexico, Thailand, Japan and Korea, NMFS and the Council have not only an opportunity but a moral obligation to set an example for these fishing nations by implementing proven effective methods (i.e. side setting), making it a requirement wherever these vessels fish.	
3	10/11/2004	Brendan Cummings, Staff Attorney, Center for Biological Diversity	a	Seabird Interactions We are pleased that NMFS is finally carrying out a legally required NEPA analysis of the impacts of the management of longline fisheries under the FMP for Pelagic Fisheries of the Western Pacific Region on seabirds. However, the primary problem with this analysis is in its timing. NEPA's fundamental purposes are to guarantee that: (1) agencies take a "hard look" at the environmental consequences of their actions before these actions occur by ensuring that the agency has, and carefully considers, detailed information concerning significant environmental impacts; and (2) agencies make the relevant information available to the public so that it may also play a role in both the decision making process and the implementation of that decision. See, e.g. 40 C.F.R. § 1500.1. In this instance, NMFS has completely reversed this process. NMFS approved the reopening of the swordfish fishery under the FMP in April, 2004 but only released the DEIS in August, 2004. As NMFS has obviously not yet finalized the DEIS, it cannot in any credible way claim that it has complied with NEPA before taking action. As such, NMFS must immediately suspend the swordfish fishery until and unless it completes a lawful NEPA process on the impacts of the fishery on seabirds.	The re-opening of the shallow-set sector of the Hawaii-based longline fishery was assessed under NEPA in the 2004 SEIS (WPRFMC 2004b). Impacts to all potentially affected environmental resources, including seabirds, were analyzed in that document. The objective of the present seabird action is further reduction of the effects of fleet operations on seabirds. To that end, a broad range of alternatives are analyzed incorporating seabird interaction avoidance measures and combinations of those measures that have the potential to increase seabird interaction avoidance efficacy over the effective current measures, which have been shown to reduce interactions by an order of magnitude.
3	10/11/2004	Brendan Cummings, Staff Attorney, Center for Biological	b	The DEIS describes the Council's preferred alternatives but nowhere in the DEIS is there any clear indication that this is also NMFS's preferred alternative. NMFS's failure to identify a preferred alternative violates NEPA and the CEQ regulations. Assuming the Council's preferred alternative is	The Council, in preliminary action documents, proposed an action and identified alternatives. Their role in the fishery management process is to initiate actions such as this. The Council's Preliminary Preferred

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		Diversity		also NMFS's preferred alternative (likely a valid presumption as NMFS seems entirely beholden to the council and incapable of independently managing the longline fishery so as to comply with its various legal mandates),	Alternative, as indicated in the DEIS, was not, in fact, NMFS' Preferred Alternative. NMFS did not have one at that time, and DEISs are not required to identify Preferred Alternatives. Identification of the Council's Preliminary Preferred Alternative in the DEIS was for the purpose of explaining clearly the history and status of the proposed action at that time.
				We believe that if NMFS adopts this alternative the agency will violate not only NEPA, but also the MBTA(16 U.S.C. § 706 et seq.).	The MBTA only applies in nearshore waters, seaward to three nm from the shoreline. Because the pelagic longline fishery is prohibited from fishing within 25 or 75 nm of the Hawaiian Islands (depending on time of year), the MBTA does not apply to interactions in this fishery off Hawaii. Furthermore, the FMP does not regulate fishing in State waters, which extend seaward 3 nm from the coasts of Hawaii, American Samoa and Guam.
				The preferred alternative does little if anything to reduce seabird mortality. In fact, all it seems to do is eliminate the requirement for using thawed blue-dyed bait. We believe that NMFS must reject the Council's preferred alternative and instead adopt the most effective combination of measures to reduce seabird mortality. The DEIS acknowledges that the single most effective measure found for both tuna and swordfish vessels was the use of side setting.	The objective of the present seabird action is cost-effective further reduction of the effects of fleet operations on seabirds, To that end, a broad range of alternatives are analyzed incorporating seabird interaction avoidance measures and combinations of those measures that have the potential to increase seabird interaction avoidance efficacy over the effective current measures. The Preferred Alternative encourages the use of side-setting. While side-setting has been shown to be very effective in limited experimental situations, its efficacy in practice has yet to be established. It seems prudent at this time to proceed cautiously until adequate experience in the fleet confirms its efficacy and operational benefits.

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				Side setting at night appears to be even more effective. Yet the DEIS does not even include as an alternative the requirement to use side setting at night for all vessels in the fishery. While, regulations designed to reduce sea turtle mortality require the swordfish fleet to set only at night, no such requirement is in place for the tuna fleet. The failure to even include what NMFS considers the most effective combination of measures as an alternative renders the DEIS fatally deficient under NEPA. Of the alternatives considered in the DEIS, Alternative SB8B, "Use current mitigation measures plus side-setting in all areas" appears to be the most likely to reduce seabird mortality. We suggest that NMFS add the requirement that such fishing only be done at night to this alternative and adopt it via regulations immediately.	While night-setting is an effective seabird interaction avoidance measure, its efficacy is lessened under full moon or other bright conditions. Further, if side-setting proves as effective as limited trials indicate, night setting will add little to the combined efficacy of the measures. The deep-set sector of the fishery sets lines during daylight because that has proven to be the most effective style of fishing for their target species. Most of this effort is south of 23˚N where seabird interactions are relatively rare. The analyses in this EIS do not suggest a need for additional controls on the deep-set tuna fishery operating south of 23°N.
3	10/11/2004	Brendan Cummings, Staff Attorney, Center for Biological Diversity	c	As mentioned above, we believe that the fishery as currently authorized is violating the MBTA. Section 2 of the MBTA provides that "it shall be unlawful at any time, by any means or in any manner," to, among many other prohibited actions, "pursue, hunt, take, capture, [or] kill" any migratory bird included in the terms of the treaties. 16 U.S.C. § 703 (emphasis added). The term "take" is defined as to "pursue, hunt, shoot, wound, kill, trap, capture, or collect." 50 C.F.R. § 10.12 (1997). The Laysan and black-footed albatross, as well as the various shearwaters and boobies likely killed by the fishery are included in the list of migratory birds protected by the MBTA. See 50 C.F.R. § 10.13 (list of protected migratory birds). The MBTA imposes strict liability for killing migratory birds, without regard to whether the harm was intended. Its scope extends to harm occurring "by any means or in any manner," and is not limited to, for example, poaching. See e.g., U.S. v. Moon Lake Electric Association, 45 F.	The MBTA only applies in nearshore waters, seaward to three nm from the shoreline. Because the pelagic longline fishery is prohibited from fishing within 25 or 75 nm of the Hawaiian Islands (depending on time of year), the MBTA does not apply to interactions in the Hawaii-based longline fishery, and therefore, no take authorization is required.
				Supp. 2d 1070 (1999) and cases cited therein. Indeed, the federal government itself has successfully prosecuted under the MBTA's criminal provisions those who have unintentionally killed migratory birds. E.g., U.S. v. Corbin Farm Service, 444 F. Supp. 510, 532-534 (E. D. Cal.),	NMFS declines to comment on CBD's attorney's interpretation of case law, pending resolution of the litigation TIRN v. NMFS.

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				affirmed, 578 F.2d 259 (9th Cir. 1978); U.S. v. FMC Corp., 572 F.2d 902 (2nd Cir. 1978). The MBTA applies to federal agencies such as NMFS as well as private persons. See Humane Society v. Glickman, No. 98-1510, 1999 U.S. Dist. LEXIS 19759 (D.D.C. July 6, 1999)), affirmed, Humane Society v. Glickman, 217 F.3d 882, 885 (D.C. Cir. 2000)("There is no exemption in § 703 for farmers, or golf course superintendents, or ornithologists, or airport officials, or state officers, or federal agencies."). Following Glickman, FWS issued Director's Order No. 131, confirming that it is FWS's position that the MBTA applies equally to federal and non-federal entities, and that "take of migratory birds by Federal agencies is prohibited unless authorized pursuant to regulations promulgated under the MBTA." MBTA Section 3 authorizes the Secretary of the Interior to "determine when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow hunting, take, capture, [or] killing . . . of any such bird." 16 U.S.C. § 704. FWS may issue a permit allowing the take of migratory birds if consistent with the treaties, statute and FWS regulations. NMFS however has not obtained, much less applied for such a permit authorizing any take by the longline fishery. NMFS cannot dispute that the longline fisheries under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region kill birds protected under the MBTA. We believe that until such take is permitted, NMFS cannot lawfully allow any fishing that is likely to result in death of such species. At a minimum, NMFS must immediately require the use of the best available mitigation measures, such as side setting at night for all longline fishing under the FMP (swordfish or tuna, Hawaii or American Samoa-based) so as to minimize the likelihood of the fisheries killing migratory birds.	
3	10/11/2004	Brendan Cummings, Staff Attorney, Center for Biological	d	In previous comment letters to NMFS and the Pacific and West Pacific Fishery Management Councils we explained how we believe that NMFS's authorization of any pelagic longline fishing in the Pacific violates NMFS's obligation under the ESA to avoid jeopardizing listed species such as the	The re-opening of the shallow-set sector of the Hawaii-based longline fishery was assessed under NEPA in the 2004 SEIS (WPRFMC 2004b). Impacts to all potentially affected environmental resources, including

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		Diversity		critically endangered leatherback sea turtle and the loggerhead sea turtle. 16 U.S.C. § 1536(a)(2). We maintain that position. Additionally, as described above, since longline fishing as currently practiced also kills numerous seabirds, and is likely driving the black-footed albatross towards eventual extinction, we believe that no pelagic longlining can be legally authorized until and unless NMFS develops and implements measures that are proven to eliminate bycatch of these and other imperiled species. Such an approach is also consistent with the call put out by over 400 scientists and 100 NGOs from 25 nations calling on the U.N. to institute an immediate moratorium on pelagic longline fishing in the Pacific until measures can be put in place that eliminate such bycatch. See www.seaturtles.org.	resources listed under the ESA, were analyzed in that document. Consultation with the USFWS on the effects of the fishery on short-tailed albatross resulted in a no-jeopardy conclusion. That population is growing at 7-8% per year near areas of concentrated longlining. Recent reports and press releases from the USFWS, the agency with trustee responsibility over the black-footed albatross and Laysan albatross, indicate stable nesting populations of these species. The proposed seabird action will benefit those populations in the NWHI and perhaps albatross populations elsewhere through technology transfer to other longline fleets.
3	10/11/2004	Brendan Cummings, Staff Attorney, Center for Biological Diversity	e	Squid Fishery We believe that the DEIS suffers from some of the same flaws with regard to its treatment of the squid fishery as it does with regards to the longline fishery. First and foremost, NMFS is allowing vessels to fish in the high seas pursuant to permits issued under the High Seas Fishing Compliance Act of 1995 ("HSFCA")(16 U.S.C.§ 5501 et seq.), prior to completing the required analysis under NEPA and the ESA. While we agree with NMFS that any future permits require such analysis, all current permits also require such analysis and must be suspended until and unless NMFS complies with these statutes. As for the actual management measures proposed in the DEIS, we are fine with the Council's preferred alternative of including the squid fishery in the existing Pelagics FMP. As squid are used as bait by other fisheries under the FMP, as well as comprise an important prey source for target and bycatch species of these fisheries, managing the squid fishery within the Pelagics FMP would allow for a better ecosystem-based management regime for the FMP as a whole. Additionally, until and unless the squid fishery is brought under an FMP, we believe that NMFS should adopt Alternative SQB.2 and cease issuing HSFCA permits for such fishery.	NMFS is taking the necessary actions to bring high seas fishing activities, including pelagic squid jig fishing, into compliance with all ESA, MMPA and NEPA requirements. Until those requirements are met with respect to pelagic squid jig fishing, pelagic squid jig fishing will not be authorized under any HSFCA permits issued after the date of February 23, 2004 (this is the date that HSFCA permit holders were advised by NMFS of the August 21, 2003, court ruling and NMFS' subsequent evaluation of all known fishing activities conducted by vessels for which HSFCA permits had been issued in the past to determine the level of compliance with the requirements of the ESA, the MMPA and the NEPA). NMFS allowed the continued authorization of high seas pelagic squid jig fishing activities under HSFCA permits issued prior to February 23, 2004, but only until the expiration date of the permit, the owner or name of the vessel changes, the vessel is no longer eligible for U.S. documentation, such

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					documentation is revoked or denied, or the vessel is deleted from such documentation
4	10/11/2004	Gerald W. Winegrad, Vice President for Policy, American Bird Conservancy	a	**I. FINAL EIS AND NOAA/NMFS SHOULD ADOPT MANDATORY EFFECTIVE MITIGATION MEASURES FOR THE HAWAII-BASED Longline FISHERY.** *A. Recommended Measures.* We would urge that the final EIS support, and that NOAA/NMFS adopt, mandatory mitigation measures of proven efficacy that would require the following for all Hawaii-based longline vessels, wherever they may fish (above or below 23 degrees N): 1. Use of all current mitigation measures, except that the use of blue-dyed bait be eliminated and the requirement for strategic offal discharge during line-setting and haul be eliminated. The requirement for thawed bait should be continued. 2. That discharge of offal be prohibited during line-setting. 3. That all vessels employ side setting unless both NMFS and the U.S. Fish and Wildlife Service inspect the vessel with the owner and determine in writing that the vessel is technologically incapable of side setting without significant costs. If a vessel cannot feasibly side set as determined herein, the vessel would have to use an underwater setting chute or paired streamer lines at all times, plus at least 60 g of weights at least one meter from each hook, in addition to the other mitigation measures required of all vessels. 4. The side setting be accompanied by requirements for at least 60 g of weights at least one meter from each hook and for a bird scaring curtain. Our recommended action is closest to Alternative SB10B in the DEIS, but with significant modifications. The key current requirements that should be kept are the provisions for shallow sets to be made at night, one hour after sunset to sunrise, and to deploy lines by a line-setting machine. Of course, the requirements for removing, treating, and reporting hooked birds and for captain and crew to attend a protected species workshop should be continued.	The Preferred Alternative encourages the use of side-setting by adding an additional deterrent requirement (tori lines) to the previous suite of required interaction avoidance measures. The Biological Opinion for the reopened swordfish fishery (USFWS 2004a) requires NMFS to develop a timetable for implementation of side-setting or another measure or combination of measures of equal or greater efficacy.
4	10/11/2004	Gerald W.	b	*B. Council Choice Maintains Status Quo; 1,800 Albatrosses*	

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		Winegrad, Vice President for Policy, American Bird Conservancy		*Could be Killed Annually.* The DEIS notes that under any alternative continuing the status quo of seabird mitigation measures, 1,800 seabirds, nearly all albatrosses, could be killed annually. Even under SB7C, the Council's preference, 1,800 seabirds could be taken if vessels do not voluntarily choose to use side setting or underwater setting chutes. The DEIS suggests that 1,300 seabirds would be killed in the shallow setting fishery; 500 more in the deep set fishery. This mortality is reduced to 10-20 birds with mandated side-setting. Thus, it is imperative that NOAA/NMFS and the final EIS adopt more effective measures as outlined in our recommendations above. The DEIS notes that it "....is intended to reduce interactions with seabirds in the Hawaii-based longline fishery....the overarching goal is to reduce the potentially harmful effects of fishing by Hawaii-based longline vessels on all seabirds." Our recommendation will come closest to accomplishing the goal of the DEIS to reduce impacts to seabirds, but most importantly to attaining NOAA's goal on bycatch minimization. Also, our recommendation comes closest to complying with Article 7.6.9 of the FAO Code of Conduct for Responsible Fisheries, adopted by all member nations, including the U.S. It provides that states should take appropriate measures to minimize catch of non_target species (both fish and non_fish species) and negative impact on associated or dependent species, in particular endangered species. It further provides that states and regional fisheries management organizations should promote, to the extent practicable, the development and use of selective, environmentally safe and cost effective gear and techniques. We urge NOAA/NMFS to include in the final EIS provisions for seabird mitigation that will not simply maintain the status quo. Unfortunately, the Western Pacific Fisheries Management Council has supported Alternative SB7C which would eliminate the blue-dyed bait and offal provisions from current regulations, thus keeping the status quo (minus these provisions) and simply allow longline vessels to voluntarily	The calculation of potential interactions under each alternative has been revised from the DEIS with newer information and more rigorous quantification. The 1,800 interactions estimate would only be reached if all interaction avoidance measures were eliminated, a scenario that will not occur under any of the alternatives considered here.

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				use much more effective measures. These vessels can choose more effective measures now. The adoption of measures that maintain the status quo and simply allow longline vessel owners to choose more effective measures at their leisure, violates the intent and purpose of NOAA to minimize bycatch, the FAO Code of Conduct, the DEIS intent and purpose, the Migratory Bird Treaty Act, and the Endangered Species Act.	
4	10/11/2004	Gerald W. Winegrad, Vice President for Policy, American Bird Conservancy	c	*C: Re-opening Shallow Setting Fishery Requires Better Conservation Measures.* The DEIS notes that the prohibition on Hawaii-based longline vessels and general longline vessels using longline gear to target swordfish ("shallow-setting") north of the equator was lifted by NMFS by rule on April 2, 2004. As noted in the DEIS, this fishery "....historically had more than an order of magnitude greater seabird interaction rate than the deep-set tuna sector." The NMFS BA for the proposed rule re-opening the shallow setting fishery noted at page 139 that "Data collected by NMFS observers show that when Hawaii-based longline vessels targeted swordfish the incidental catch of seabirds was far higher than when vessels target tuna (Table 39)." The table indicates a rate that is 51 times greater for vessels targeting swordfish than for tuna vessels. This is attributable to these vessels fishing where the albatrosses forage, particularly for squid. And yet, the new regulations failed to adequately address this 51-fold increased potential for seabird mortality and simply continued the inadequate avoidance measures for seabirds that were adopted before the swordfish fishery was closed.	Past information on interactions of seabirds with the shallow-set sector of the fishery is based on operations before implementation of currently required interaction avoidance measures. The reauthorized fishery has implemented measures specified by the USFWS to minimize risks to short-tailed albatross and those measures have been shown to effectively limit interactions with other albatross species as well. Further, the model fishery will not exceed 50% of the previous effort level.
				The DEIS finds no evidence to indicate whether the requirements to avoid sea turtle take–the use of a circle hook size 18/0 or larger with a 10 degree offset, combined with mackerel-type bait–will prevent any avian mortality. Seabird mortality could rise to the level that existed before restrictions on the shallow set fishery were imposed in 2000.	Measures currently in place in the fishery are effective in keeping birds from the hooks. The 2004 SEIS (WPRFMC 2004b) analyzed the hooks now required in the shallow-set fishery and concluded that their size and configuration may have benefits in terms of reducing the consequences of hooking.

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				The re-opening of this fishery with 2,120 sets allowed, has very serious consequences for albatrosses and potentially other seabirds. The DEIS notes that 2/3 of 164 Hawaii-based longline permitees applied for these shallow setting permits before the May 1, 2004 deadline. ABC and many of our partner organizations had been urging the continued closure of this shallow-setting swordfish fishery to prevent the killing of albatrosses and other seabirds in the Hawaiian longline fishery. In addition, we and our colleagues in national conservation organizations have met with three consecutive Directors of NMFS, various other NOAA/NMFS officials, and sent repeated letters and made repeated phone calls to Western Pacific Regional Fisheries Management Council members and NMFS' Regional PIAO Director about the need for effective regulations in Hawaiian waters to end the killing of albatrosses.	The reauthorized fishery has implemented measures specified by the USFWS to minimize risks to short-tailed albatross and those measures have been shown to very effectively limit interactions with other albatross species as well. Further, the model fishery will not exceed 50% of the previous effort level.
				In re-opening the shallow setting fishery for swordfish, NMFS adopted new measures exclusively to deal with sea turtles and refused to adopt more effective seabird avoidance measures to prevent the mortality of albatrosses and shearwaters. The current regulatory regime continued the status quo before the closure of the shallow setting fishery. The U.S. FWS BiOp for short-tailed albatross issued November 28, 2000 required night-setting, just as under current regulations, for the shallow setting fishery. All of the other seabird mitigation measures stayed the same from the previous BiOp: 45 g of weight and line-setting machines for the deep set fishery, thawed, blue dyed bait and strategic offal discharge for all vessels. As the DEIS notes, even most of these measures simply continued the status quo for these fisheries as most all deep setting vessels used at least 45 g of weights on lines and used line-setting machines. The swordfish fishery typically set at night, although not always one hour after sunset.	Reauthorization of the fishery was accompanied by implementation of measures specified by the USFWS to minimize risks to short-tailed albatross and those measures have been shown to very effectively limit interactions with other albatross species as well. Further, the model fishery will not exceed 50% of the previous effort level.
				Because listed sea turtles spawned the successful litigation that led to the swordfish closure, seabirds were given little focus in re-opening the shallow setting fishery, including an	There has never been a take of an ESA-listed seabird species in the Hawaii-based longline fishery, and the proposed action is intended to

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				ESA-listed species, thus subjecting seabirds to illegal take under both the Endangered Species Act (ESA) and the MBTA. NMFS has begun consultation under section 7 of the ESA with the U.S. Fish and Wildlife Service (FWS) to obtain a new Biological Opinion on the effect of this action on the ESA-listed endangered Short-tailed Albatross. The final EIS and NOAA/NMFS should adopt measures for seabird mitigation that will not simply maintain the status quo, but that require side setting and other effective mitigation measures that can virtually eliminate albatross mortality if deployed properly.	make it even less likely that such an event will occur. As explained above, the MBTA does not apply to interactions with this fishery, and therefore, no take authorization is required. Prior interactions have not violated the ESA or the MBTA. That consultation is now complete and the USFWS has concluded that the reauthorized fishery will not jeopardize the continued existence of the short-tailed albatross. There has never been a reported interaction of this fishery with a short-tailed albatross. The measures currently in place have been shown to be very effective in minimizing seabird interactions, and the Preferred Alternative has the potential to further reduce the effects of the fishery on seabirds. The Preferred Alternative encourages the use of side-setting. While side-setting has been shown to be very effective in limited experimental situations, its efficacy in practice has yet to be established. It seems prudent at this time to proceed cautiously until adequate experience in the fleet confirms its efficacy and operational benefits.
4	10/11/2004	Gerald W. Winegrad, Vice President for Policy, American Bird Conservancy	d	**II. SIDE-SETTING SHOULD BE REQUIRED ON ALL HAWAII LONGLINERS.** Now that the shallow-setting swordfish fishery has been re-opened as a "model" fishery, it is critical that effective seabird avoidance measures be required. The recent research on board Hawaiian longliners documenting the effectiveness of side setting with at least 60 g of weight at least one meter from each hook, and using a bird scaring curtain is noted in the DEIS. Albatross and other seabird take can be nearly eliminated with these safe, inexpensive measures without deceasing	The USFWS's 2004 Biological Opinion for the shallow-set sector of the fishery requires the phasing in of side-setting or of measures equal or greater in effectiveness in deterring seabirds in the Hawaii-based fleet.

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				fishing efficiency. Blue-dyed bait is ruled out as an effective, enforceable deterrent. See Gilman, E. et al., *Performance Assessment of Underwater Setting Chutes, Side Setting, and Blue-Dyed bait to Minimize Seabird Mortality in Hawaii Longline Tuna and Swordfish Fisheries*, Final Report, Honolulu, HI (August 2003). Also see Melvin et al., *Solutions to Seabird Bycatch in Alaska's Demersal Longline Fisheries* (October 2000), which conclusively demonstrated that paired streamer lines, when properly deployed, can eliminate all albatross and nearly all other seabird mortality. The researchers in their Report recommended that all Alaskan longliners deploy these paired streamer lines. Indeed, the DEIS clearly details the benefits of side setting. The DEIS finds that "Side setting has been shown to virtually eliminate bird capture. Gilman et al. (2003)." The DEIS rates side setting at night as the best possible seabird mitigation/avoidance measures and side setting with line-shooters as number 2. Thus, both shallow setting and deep setting fisheries would be able to nearly eliminate all mortality with these two simple measures. The DEIS gives side setting the highest of all Operational ratings and the highest of all Compliance Enforcement ratings of all mitigation measures examined. See Table 2.1-2 at page 53. The DEIS notes that side setting may benefit both seabird populations and fishing efficiency and can be accomplished with small costs up front and zero additional costs after initial changes are made and while fishing. Loss bait is minimized and more targeted fish can be caught. Further, several vessels have already voluntarily begun to use side setting and 70% of vessels already deploy 60 g weights, the rest 45 g weights. We support the elimination of the use of blue-dyed bait and the requirement for strategic offal discharge during line-setting and haul, but only if the requirement for thawed bait is continued and the discharge of offal is prohibited during line-setting. Thawed bait sinks quicker and should be required as it is under current U.S. regulations for CCAMLR waters. Eliminating offal discharge while line-setting should	

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				minimize the attraction of albatrosses and other seabirds to longline vessels during the critical line-setting time. Other nations, including Australia, have adopted such a prohibition. Blue-dyed bait is not an effective deterrent, especially when used on fish. Both the NMFS BA on the re-opening of the shallow setting fishery and the recent research done on board Hawaii longline vessels document this and challenge its efficacy and the ease and practicality of use. See Gilman, E. et al. (2003). We also support the continuation of the requirements for 100% observer coverage for the shallow setting longline fishery and at least 20% for the deep setting fishery, provided that at least 5% coverage is dedicated primarily to seabird bycatch, as required under the current U.S. FWS BiOp. The DEIS and NMFS have rejected time and area closures to better protect seabirds. The previous closures of fishing areas were lifted under the new regulations of April 2, 2004. This makes the adoption of the recommended mitigation measures above all the more important. In fact, the DEIS rejects time and area closures because of the effectiveness of available mitigation measures. The final EIS and NMFS should require the adoption of these measures and not simply maintain the status quo.	
4	10/11/2004	Gerald W. Winegrad, Vice President for Policy, American Bird Conservancy	e	**III. FINAL EIS AND SEABIRD MITIGATION MEASURES NEED TO ADDRESS KILLING OF 10,098 BLACK-FOOTED AND 8,561 LAYSAN ALBATROSSES** NMFS data documents that Hawaii-based longliners killed 10,098 Black-footed Albatrosses from 1994-2003 and 8,561 Laysan Albatrosses. Very few other birds were killed. Since the closure of the shallow-set swordfish fishery, the numbers of albatrosses killed declined to 65 Black-footed Albatrosses and 51 Laysan Albatrosses (116 total) in 2002, despite an increased numbers of hooks being set in 2002 (27 million hooks set). Observer coverage increased to 25% of hooks set in 2002. Unfortunately, in 2003 the take of albatrosses increased to 111 Black-footed Albatrosses and 114 Laysan	The historic figures for seabird interactions in the fishery represent operations before requirement of current interaction avoidance measures. The level of interactions under currently required measures are not expected to adversely affect populations of albatrosses, but will be further reduced under the terms of the Biological Opinion for the reopened swordfish fishery (USFWS 2004a). The Biological Opinion further recommends

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				Albatrosses (225 total) taken. A record 29.3 million hooks were set from 110 vessels with observer coverage of 22.2%. This increase occurred prior to the re-opening of the shallow setting swordfish fishery and is cause for concern. Further, the mortality data from NMFS does not include any adjustments upwards for birds hooked but not counted. In an experiment to test the efficacy of an underwater line chute conducted in the Hawaii-based fishery in March, 2002, Gilman et al. (2002) found that 34% of birds observed to be hooked during the set were not found on the line when the gear was hauled in. In the August 2003 Final Report from Gilman et al., a finding of 28% of birds observed hooked but not recovered was documented. The DEIS does note that NMFS albatross mortality data does not include increased mortality to chicks from a parent's death, or suppressed breeding when one adult dies. The DEIS should note and address this additional mortality, and the prevention of such mortality needs to be aggressively addressed in adopting final plans for mitigation measures, as recommended above.	NMFS to continue research into the drop-off issue.
4	10/11/2004	Gerald W. Winegrad, Vice President for Policy, American Bird Conservancy	f	**IV. DOCUMENTATION OF SERIOUS DECLINES IN LAYSAN ALBATROSSES AND FOCUS ON GLOBAL LISTING OF ALL THREE ALBATROSSES.** The DEIS contains some analyses of the northern hemisphere albatross species affected or potentially affected by Hawaii-based longline. All three species of these albatross are now at some risk of extinction and longline mortality is the gravest threat to at least two of these species. The three albatross species are all at risk of mortality from the Hawaii-based longline fisheries, primarily the shallow-setting swordfish fishery. According to the DEIS, over 95% of the world's breeding population of Black-footed Albatross and over 99% of Laysan Albatross breed in the NW Hawaiian Islands and forage in and around the core areas of Hawaiian longline vessels, particularly the swordfish vessels. This makes them even more vulnerable to Hawaii-based longline fisheries.	Consultation with the USFWS on the effects of the reauthorized swordfish fishery on short-tailed albatross resulted in a no-jeopardy conclusion (USFWS 2004a). That population is increasing at 7-8% per year near areas of concentrated longlining. Recent reports and press releases from the USFWS, the agency with trustee responsibility over the black-footed albatross and Laysan albatross, indicate stable nesting populations of these species. The proposed seabird action will benefit those populations in the NWHI and perhaps albatross populations elsewhere through

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					technology transfer to other longline fleets.
				The DEIS fails to mention the serious population declines in Laysan Albatross, likely due to longline mortality, and this population decline leading to this species being listed as Vulnerable to extinction under the 2003 IUCN Red List of Threatened Species. (see www.redbook.org). In fact, the analyses is totally devoid of the best population data. Under the IUCN listing as Vulnerable to extinction, this recent analyses appears in *Threatened Birds of the World 2004*. CD-ROM. BirdLife International, Cambridge, U.K. (Accessible on the web): *A. Laysan Albatross Population Declines by 32% Over a Decade.* "This species is being listed as threatened for the first time. It is classified as Vulnerable on the basis of a >30% decline over three generations (84 years). The reason for this decline has been attributed to the effects of longline fishing in the North Pacific. Preliminary data suggest that the rate of decline could be more rapid and that therefore this species could warrant a more serious threatened status. This threat is ongoing and is therefore projected into the future. Range & Population. *Phoebastria immutabilis* is known to breed at 16 sites (nine with populations of greater than 100 pairs), mostly in the Northwestern Hawaiian Islands (**USA**) with fewer than 500 nests in small colonies in **Japan** and **Mexico**. The population is estimated to be *c*.437,000 breeding pairs. The largest colony is at Midway Atoll where 286,662 active nests were counted in 2001. The second largest colony is at Laysan Island where 103,689 pairs were estimated in 2001. Population sizes at monitored colonies increased between 1980 and 1995 but have never reached the densities observed prior to large-scale harvests for feathers in the early 1900s. Recent information has shown a 32% decline during 1992-2002 (3.2% per annum) of birds breeding on the Northwestern Hawaiian Islands where 90% of the global population is found.	As explained above, the USFWS, with trustee responsibility over the Black-footed albatross and Laysan albatross, terms the status of these populations "stable." Major sources of mortality to these populations, including drift nets and military operations on Midway, have been removed within the life span of a single albatross generation, and population effects of those changes may be ongoing. Mortality from the Hawaii longline fishery has been greatly reduced and the present action is intended to further reduce those effects. In addition, technology transfer of effective seabird interaction avoidance measures proven in this fishery to have operational benefits to other longline fleets could improve the population status of other seabirds. The USFWS terms the status of these populations "stable" because the current status of the Laysan and black-footed albatross populations is uncertain, i.e., not clearly increasing or decreasing. Ongoing modeling efforts may improve our understanding of this issue. The USFWS is responsible for monitoring these populations, and they are currently undertaking population status assessments for these two species. These assessments are due to be completed by December 31, 2005, and will provide the USFWS and NMFS with additional information with which to assess the population trajectories.

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				Threats. The species is killed in pelagic and demersal longline fisheries in the North Pacific as well as in illegal high seas driftnet operations. Preliminary analyses suggest that pelagic longliners in the North Pacific may kill *c*.10,000 birds (of this species) each year, while demersal longline operations in the Bering and Alaskan Sea kill *c*.700 birds per year. Targets. *Continue monitoring population trends and demographic parameters. *Conduct further analysis of long term trends to see if a more serious threat status is justified. *Continue satellite-tracking studies to assess temporal and spatial overlap with longline fisheries. *Adopt best-practice mitigating measures in all longline fisheries within the species's range. *Continue and enhance awareness programmes in all longline fleets." Further supporting this data is a January 8, 2004 FWS-Pacific Islands Office Press Release. While noting a large increase in 2004 breeding Laysan Albatrosses on Midway Island, the FWS notes that: "The Service conducts complete counts of this species at Midway when possible, and counts or sample densities of nesting birds are taken at French Frigate Shoals and Laysan Island every year. These monitoring sites account for 93 percent of the worldwide breeding population of this species. Between 1992 and 2002, the number of breeding pairs at all three sites combined has declined at an average rate of 3.2 percent per year. This rate represented a cumulative decline in annual breeding attempts of 32 percent over a ten-year period." The Laysan Albatross is on the 2002 FWS Birds of Conservation Concern List. This means that without additional conservation actions, the birds are likely to become candidates for listing under the Endangered Species Act. The Birds of Conservation Concern list is mandated by Congress under 1988 amendments to the Fish and Wildlife Conservation Act. The North American Waterbird Conservation Plan lists this species as of High Conservation Concern. These latter two listings should be addressed in a final EIS.	

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				B. Black-footed Albatross Population Declines by 1% a Year Over a Decade. This species has been recently changed to the next to highest international category of Endangered under the 2003 IUCN Red Book. The 2003 IUCN Red List of Threatened Species provides: "This species has been upgraded to Endangered on the basis of a projected future decline of more than 60% over the next three generations (56 years), taking account of present rates of incidental mortality in longline fisheries in the north Pacific Ocean." According to the January 8, 2004 FWS Press Release cited above: " Black-footed Albatrosses currently breed at 12 sites and are estimated to have a world population of about 57,000 breeding pairs. Since 1998, at least 75 percent of the world's breeding population is counted less frequently, but all sites except one have been surveyed at least once since 1991. At Midway, Laysan Island, and French Frigate Shoals, the three sites where the Service conducts annual complete counts of nesting pairs, a 9.8 percent decline in the breeding population was recorded between 1996 and 2001."	
4	10/11/2004	Gerald W. Winegrad, Vice President for Policy, American Bird Conservancy	g	**V. DEIS FAILS TO DISCUSS NECESSITY OF ESA CONSULTATION AND A NEW BIOP BEFORE SHALLOW SET FISHERY RE-OPENED.** The FWS issued a new BiOp in November 2002 after the closure of the swordfish fishery and the adoption of seabird avoidance measures. The BiOp for the tuna longline fishery still noted that: "The expected, adverse effect of the proposed action is mortality of short-tailed Albatrosses.… With respect to the short-tailed albatross, the most important change to the fishery resulting from the sea turtle mitigation measures is this suspension of all swordfish-target or shallow-set longline operations by Hawaii longliners.…We have determined that short-tailed albatrosses are at risk of injury or mortality from Hawaii longline fishing operations …We estimate that one (1) short-tailed albatross per year may be taken in the Hawaii-based longline fishery, or a total of four over the remaining four-year duration of this consultation."	The Biological Opinion for the reopened swordfish fishery (USFWS 2004a) has been issued.

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				The FWS noted that: "This revised estimate for the fishery is substantially less than the incidental take of 2.2 short-tailed albatross per year estimated in the November 2000 Opinion for a fishery that included shallow- as well as deep-set operations." This is because of the much higher rate of seabird take in the shallow-setting swordfish fishery, estimated by NMFS at 51 times greater for vessels targeting swordfish than for tuna vessels. The Short-tailed Albatross is being exposed to even more potential mortality than before with zero changes in seabird mitigation measures. ESA regulations at 50 CFR §402.16 required reinitiating of formal consultation with the FWS under ESA Section 7 BEFORE re-opening the swordfish fishery. The DEIS fails to mention this, although consultation has now begun. It is now critical that effective seabird avoidance measures be required now that the shallow-setting swordfish fishery has re-opened and that the final EIS include effective measures as the chosen action to be taken. See our recommendations for specific measures above.	
4	10/11/2004	Gerald W. Winegrad, Vice President for Policy, American Bird Conservancy	h	**VI. NMFS RE-OPENING THE SWORDFISH FISHERY VIOLATES THE MBTA.** Any killing of a migratory bird constitutes a taking under the MBTA, even if inadvertent and unintentional. See U.S. v. Moon Lake Electric Association, 45 FSupp 2d 1070 (1999), decided in the U.S. District Court for Colorado and the cases cited therein. As the Court of Appeals for the District of Columbia Circuit (with jurisdiction over NMFS) made clear, this prohibition not only applies to private individuals and corporations but also "prohibits federal agencies from killing or taking migratory birds without a permit from the Interior department." Humane Society of the U.S. v. Glickman, 217 F.3d 882 (D.C. Cir. 2000). On July 21, 1998, the Director of the USFWS requested the Interior Solicitor for his opinion on the application of the MBTA to the high seas. On January 19, 2001, the Department of Interior issued a Solicitor's Opinion that the MBTA clearly applies to the full 200-mile EEZ and to U.S. citizens and vessels wherever they may be on the high seas. The Opinion	The MBTA only applies in nearshore waters, seaward to three nm from the shoreline. Because the pelagic longline fishery is prohibited from fishing within 25 or 75 nm of the Hawaiian Islands (depending on time of year) or 50 nm off the NWHI, the MBTA does not apply to interactions with this fishery, and therefore, no take authorization is required.

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				was cited as being "final", was cleared by Justice, but its implementation by the FWS has been delayed. Nonetheless, NMFS is under a statutory duty to prevent the take of any migratory seabird, including the Laysan, Black-footed, and Short-tailed Albatrosses. The DEIS acknowledges that under any alternative continuing the status quo of seabird mitigation measures, 1,800 seabirds, nearly all albatrosses, could be killed annually. Even under SB7C, the Council's preference, 1,800 seabirds could be taken if vessels do not voluntarily choose to use side setting or underwater setting chutes. The U.S., including NMFS and the Council, have a statutory duty under the MBTA to assure that longline fisheries they license and permit do not result in the take of migratory seabirds. In Hawaii, as the DEIS notes, this can be achieved best by requiring side-setting, coupled with the other measures recommended above. The final EIS should fully discuss the MBTA, its prohibitions against take, and the necessity for the adoption of mandatory side-setting and other mitigation measures to meet its prohibitions on the take of migratory birds.	
4	10/11/2004	Gerald W. Winegrad, Vice President for Policy, American Bird Conservancy	i	In conclusion, we urge that the final EIS and NOAA/NMFS adopt effective mitigation measures that include side-setting for all Hawaii-based longliners with a bird-scaring curtain, 60 g weights within one meter of each hook, in addition to night-setting and line-setting machines. Offal discharge during line-setting should be prohibited. The strict mandates against unpermitted take of migratory birds under the MBTA should be adhered to, as should compliance with the ESA, and the FAO Code of Conduct and NOAA's policy for minimizing bycatch. This can only be accomplished through the adoption and enforcement of mandatory avoidance measures mentioned above.	The Preferred Alternative analyzed in the FEIS would require use of more interaction avoidance measures than are currently required, unless an operator opted to use side-setting. This is intended to encourage the use of side-setting. The USFWS's 2004 Biological Opinion for the shallow-set sector of the fishery requires the phasing in of side-setting or of measures equal or greater in effectiveness in deterring seabirds in the Hawaii-based fleet. This will allow time to resolve present uncertainties regarding its implementation. The Council is investigating the offal discard issue further and may in the near future propose to delete this measure from the suite of currently required measures. Take of Laysan or black-footed albatross by

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					the Hawaii-based longline fishery violates neither the ESA nor the MBTA.
5	10/11/2004	James M. Lynch, Attorney for HLA	a	**I. Purpose and Need for Action** The DEIS mischaracterizes the purpose and need for action by stating that in 2001, the shallow set component of the fishery "was closed due to excessive takes of endangered and threatened sea turtles." HLA strongly disagrees with the characterization that the swordfish fishery was closed for any legitimate, scientifically defensible reason. This point is evidenced by the fact that NMFS' regulations closing this component of the longline fishery, as well as the underlying biological opinion for the fishery, were overturned by the District Court of Washington D.C. as arbitrary and capricious, and not in accordance with law. See HLA v. NMFS, 288 F.Supp 2d 7 (D.D.C. 2003). In response to this litigation, the Council adopted a new proposed action that adopted a suite of sea turtle mitigation measures, and provided for restored tuna and swordfish fisheries. NMFS subsequently consulted over this new proposed action, determined the action would not jeopardize listed turtle species, and enacted new fishery regulations which are currently in place. HLA recommends that NMFS revise discussions contained in the Purpose and Need Statement and other sections of the DEIS to more accurately explain the background and events leading up to the current proposed action.	The Purpose and Need section has been reworded to eliminate reference to takes of sea turtles.
5	10/11/2004	James M. Lynch, Attorney for HLA	b	**II. Status of Seabird Populations** The DEIS paints a picture that BFAL and LAL populations in the vicinity of the Hawaiian Islands are declining at significant levels. Regarding the status of BFAL population, the DEIS states that analyses of breeding pair counts at Midway Atoll, Layasan Island, and French Frigate Shoals suggest that BF AL populations are declining at the rate of about 1 percent annually. DEIS at 101. This statement is not supported by any scientific data contained in the DEIS. First, as the time series for BF AL population at Laysan Islands shows, wide confidence intervals exist around available breeding pair estimates, particularly in the early part of the time series containing the largest number of birds.	The population analyses have been revised to point out the uncertainty in current estimates of trajectories.

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				These broad confidence intervals suggest a high degree of uncertainty regarding breeding pair counts. Second, breeding pair estimates from Laysan Island were extrapolated from egg counts, whereas counts from French Frigate Shoals and Midway Atoll are based on direct bird observations. These data were then pooled for purposes of determining population trends over time. Pooling such data introduces a number of biases and uncertainties that should be more fully discussed in the DEIS; presently the DEIS does not indicate the potential problems associated with combining arguably unrelated data sets to perform a regression analysis. Finally, regression estimates concerning BFAL breeding pair correlations provided in Figure 3.6.1-3 are not statistically significant, and instead indicate a relatively stable trend in nesting pairs. DEIS at 103. The DEIS fails to discuss the statistical significance of regression results, and merely states that such data "seem to indicate" a reduction in nesting pair abundance over time. The statistical analysis contained in the DEIS should be revised, and subjected to review by NMFS scientists or members of the Council's Scientific and Statistical Subcommittee ("SSC").	
5	10/11/2004	James M. Lynch, Attorney for HLA	c	The same biases and improper extrapolations occur in section of the DEIS addressing the status of LAL populations; however, these biases are exacerbated by the fact that only five data points exist for breeding pair counts at Midway Atoll (Figure 3.6.1-4), and thus, when these and other data points are combined from Laysan Island and French Frigate Shoals, an even less reliable population trend exists (Figure 3.6.1-5). As with the BF AL breeding pair correlation, LAL correlations are likewise statistically not significant; however, the DEIS fails to discuss this fact in any detail. Time series data presented in Figure 3.5.1-4 contradicts the regression analysis, and shows an increasing or stable trend in LAL abundance, particularly when one considers recent date from Midway Atoll where breeding pairs in 2003 were equivalent to those observed in 1992 (about 40,000). DEIS at 105. Again, statistical analyses contained in the DEIS should be reviewed by NMFS scientists or the Council's SSC.	The population analyses have been revised to point out the uncertainty in current estimates of trajectories. The increase of the short-tailed albatross population in the face of considerable longlining pressure has been noted.

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				The DEIS fails to discuss how recent increases in short-tailed albatross populations, a species whose primary nesting range overlaps with BF AL and LAL, comport with purported declines with BFAL and LAL populations. Short-tailed albatross experience many of the same environmental pressures; however, these federally-listed species have been increasing in abundance over the past several years. The DEIS should discuss the significance of this increase, and analyze whether this increase may provide some indication of population status or trends for BF AL and LAL species.	
5	10/11/2004	James M. Lynch, Attorney for HLA	d	**III. Effects of Alternatives on Seabird Species** Under the No Action alternative, and subsequent alternatives, the DEIS reaches the conclusion that seabird deterrents currently required by regulation are not effective, and that the total incidental capture of seabirds in the longline fishery will be about 1,800 per year. The DEIS makes no attempt to assess the potential additive benefits of multiple seabird deterrents, nor does the DEIS explain why it is reasonable to assume that currently-required measures are not effective when existing information indicates the contrary. The conclusions and assumptions contained in the DEIS regarding potential seabird interactions in the longline fishery ignore a variety of relevant scientific data, including data regarding the efficacy of night-setting in the swordfish fishery -data used by FWS to estimate potential take of short-tailed albatross in its biological opinion. Further, the DEIS ignores existing information from the tuna fishery that indicates that existing seabird deterrents have been about 73 percent effective in reducing take of seabirds in this fishery. *See WESPAC and HLA, Biological Assessment of the Pelagics New Technology Regulatory Amendment* (May, 2004). The DEIS likewise ignores available scientific studies that support currently-employed seabird deterrents, instead focusing on one study of limited scope and duration that suggests side-setting may reduce seabird interactions further. The highly biased and unsupported discussion of existing seabird deterrents does not reflect a reasonable or rationale	Current interaction avoidance measures are not ineffective, but other methods or combinations of methods may be even better. The estimates of efficacy have been revised in the FEIS.

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				assessment of environmental impacts. The No Action Alternative and related sections of the DEIS should be revised to include an evaluation of the scientific merits of each individual seabird deterrent both currently required by regulation, and those that may potentially be adopted, such as side-setting. The DEIS should likewise evaluate the individual and additive benefits of currently-required seabird deterrents, and estimate seabird interactions in the fishery based upon available scientific information. Failing to do so will result in a highly biased and inaccurate assessment of alternatives.	
5	10/11/2004	James M. Lynch, Attorney for HLA	e	**IV. Conclusions** As indicated above, HLA believes that the DEIS suffers from a number of defects, including (I) a biased and unsupported analysis of the status of albatross populations; (2) a lack of detailed analysis regarding the efficacy of existing seabird deterrents; and (3) a lack of any detailed analysis regarding the amount of seabird bycatch likely to occur in the longline fishery as a result of implementing one or more required seabird deterrents. The DEIS' failure to provide a detailed, scientifically- supported assessment of these key issues violates NMFS , obligation under the NEPA to take a "hard look" at the potential environmental effects of various seabird mitigation alternatives. Discussions contained in the DEIS likewise undermine the considerable progress made by the Council and HLA to proactively address seabird issues in the longline fishery in collaboration with environmental groups and the Services.	The deficiencies noted have been rectified in the FEIS. See Section 3.6.1 for revisions to the descriptions of the status of albatross populations. In addition, Section 4.5, was extensively revised, including addition of a quantitative comparison of the potential numbers of seabirds hooked under given assumptions for each alternative (Section 4.5.26).
5	10/11/2004	James M. Lynch, Attorney for HLA	f	HLA recommends that NMFS convene a workgroup consisting of Council staff and HLA representatives to discuss these comments and related information in greater detail. Council staff possess considerable expertise regarding issues raised in this comment letter, and NMFS should work closely with Council staff to insure the DEIS is revised in a manner to comport with all applicable legal requirements.	The analyses in the FEIS benefitted from the work of individuals on a Fishery Management Action Team, which included Council staff and which guided and reviewed the final analyses.
6	10/12/2004	Summer Allen, Region 9, U.S. Environmental	a	Seabird Interaction Mitigation Measures Alternatives EPA recognizes the lack of available information regarding short-tailed albatrosses and notes that no observations were	Calculations of seabird interactions under the various alternatives have been revised in the

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		Protection Agency (EPA)		made specifically for this species. However, we also note the success rate of methods such as side-setting to reduce impacts to seabirds when compared to other mitigation measures. For example, the Draft EIS estimates that if all vessels in the Hawaii longline fishery switched to the side-setting seabird deterrent method, 10-20 birds might be captured per year. However if all fishermen used an underwater setting chute, about 338 birds per year would be captured, and 1,743 birds for shallow-setting vessels. Current measures could lead to the catch of 1,800 birds per year (page 216). Due to these results, it seems appropriate to consider an alternative with potential for environmental impacts. The Preferred Alternative for swordfish vessels incorporates current mitigation measures (with the exception of thawed blue-dyed bait) or one of the following: side-setting, underwater setting chute, or a tori line. For implementation o tune vessels, it incorporates the same measures when fishing north of 23˚ N latitude. While all of these measures have utility, the decision to abandon the use of blue-dyed bait is not discussed in detail. *Recommendations:* As the purpose of this action is to reduce the adverse effects on interactions with seabirds in the Hawaii-based longline fishery (Executive Summary, page 1), NMFS should consider an alternative that would require mitigation measures with a higher success rate, such as mandatory side–setting, when feasible (Alternative SB10). The final EIS should discuss the discontinuation of the use of blue-dyed bait if discontinuation is part of the alternative that is carried forward. In particular, this should be discussed in light of the fact that blue-dyed bait was a mitigation commitment in the Pelagic Fisheries FMP Record of Decision (ROD).	FEIS, as has the Preferred Alternative. The Preferred Alternative in the FEIS would require use of more interaction avoidance measures than did the Preliminary Preferred Alternative in the DEIS, unless an operator opted to use side-setting. This is intended to encourage the use of side-setting. The USFWS's 2004 Biological Opinion for the shallow-set sector of the fishery requires the phasing in of side-setting or of measures equal or greater in effectiveness in deterring seabirds in the Hawaii-based fleet.
6	10/12/2004	Summer Allen, Region 9, U.S. Environmental Protection Agency (EPA)	b	<u>U.S. Squid Fishery Context</u> EPA recognizes that the squid fishery is a developing area of the economy in the U.S. EEZ. However, we would like to see more information regarding the effects of this fishery on the effected resources. While there is some discussion of the	There are few direct data on the effects on the squid fishery on protected resources, but existing logbook data show no protected species interactions. Limited information also

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				impacts of the proposed action on marine mammals and seabirds, supporting data is not included. The discussion of the management plan and associated alternatives for the squid fishery is confusing and the specific implementation of these measures is not clear. The feasibility of implementing many of these alternatives should be assessed. In particular, alternatives including international monitoring should be evaluated in the context of multiple, fragmented forums that exist for fisheries management in the Pacific. In addition, it is not apparent whether there has been an experimental fishery to determine effects on the target species and protected species, or if this is planned for the near future. *Recommendation*s: The Final EIS should include an easy-to-read description of the proposed management of the squid fishery, the background, and the context of the associated fisheries. NMFS should consider incorporating an experimental fishery into the proposed plan to determine target and protected species impacts, before implementing the project as proposed. If an experimental fishery is not feasible, the justification should be included in the Final ElS as well as data collection measures that would allow population and environmental monitoring on a consistent basis. This is particularly important in that the shallow-set swordfish fishery was established in 2003 and the effects of sea turtle mitigation measures on seabirds, has not been assessed (Draft EIS. Executive Summary page i.) Additional commitments may be needed to protect this fishery once it is well- established.	exists from other fisheries and that has been included. An experimental fishery is not feasible. There are only four U.S. vessels which are appropriately outfitted and have participated in this fishery, and they are currently fishing in the southern hemisphere. The description of the squid fishery alternatives has been improved. Implementation of an experimental fishery would delay rulemaking, which would allow NMFS to place observers on domestic squid jigging vessels.
6	10/12/2004	Summer Allen, Region 9, U.S. Environmental Protection Agency (EPA)	c	*Associated Plans* As stated previously, this document follows a series of Fishery Management Plans (FMPs), Amendments, and Endangered Species Act consultations. While the Draft ElS' describes the current mitigation measures that are incorporated into the most recent alternatives there is no information regarding the applicability of previous requirements from the Record of Decision (ROD) for the Pelagic Fisheries FMP .The Draft EIS acknowledges that	The focus of the 2001 FEIS was reduction of sea turtle interactions. The ROD reviewed the then current status of seabird interaction avoidance measures. That discussion is now outdated. Final rules concerning seabird interaction avoidance measures in the deep-set sector of the fishery have been in use for several years. The USFWS Biological

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				other NEPA documentation will follow for related issues in the fishery. Amendment may need to be considered if the results of PMUS stock assessment show population declines. EPA notes that NMFS expects a more recent Biological Opinion for short- tailed albatrosses with the next week. *Recommendations:* The Final EIS should include information regarding the feasibility of including additional mitigation measures that were evaluated in the 2001 Pelagic Fisheries FMP ROD. The Final EIS should document and assure compliance with all terms of the Short-tailed Albatross Biological Opinion issued by FWS in November 2002 for the tuna sector of the Hawaii-based longline fishery and associated amendments. When the forthcoming Biological Opinion on the effects of the swordfish sector of the fishery on short-tailed albatrosses is issued, it should be incorporated into the alternative selected in the Final EIS as well as the mitigation measure~ included in the ROD.	Opinion on the effects of the shallow-set sector of the fishery has been issued, and its Terms and Conditions will be implemented by NMFS.
7 (Comment letter dated and received after the comment period had elapsed.	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	a	**GENERAL COMMENTS** The DEIS contains a considerable amount of information relative to the first action concerning seabird deterrent strategies, and the Department concurs that the proposed action is well described and the alternatives analysis is thorough. However, we believe the DEIS is deficient in its description of the high seas squid fishery that is proposed to operate within the vicinity of the Hawaiian archipelago. We believe the DEIS does not adequately assess potential squid fishery bycatch-related impacts to protected species (*e.g.*, sea turtles, marine mammals, and seabirds). Therefore, we recommend the DEIS be revised in the FEIS to include: (1) a more complete discussion of the squid fishery proposed to occur within the vicinity of the Hawaiian archipelago, (2) an impact assessment based on a commitment to avoid and minimize project-related impacts, and (3) proposed mitigation measures that minimize	The high seas squid fishery existed briefly several years ago. There is no additional information available about that fishery or its bycatch. Information from bycatch in other pelagic squid jigging fisheries has been included in the FEIS.

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				unavoidable impacts and compensate for significant unavoidable impacts.	
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	b	The objective of the seabird management action analyzed in the DEIS is stated to be "the cost-effective further reduction of the potentially harmful effects of fishing by Hawaii-based longline vessels on the short-tailed albatross, but the overarching goal is to reduce the potentially harmful effects of fishing by Hawaii-based longline vessels on all seabirds" (DEIS p. v). The Department's comments on the analysis of this management action are framed in the context of this stated goal. The Fishery Council's preliminary preferred alternative (SB7C): We do not support this alternative, which includes a menu listing four seabird deterrent options for the shallow-set fishery wherever it operates and four deterrent options for the tuna fishery when operating north of 23 degrees North latitude (23ºN). Each of these lists includes the use of tori lines and the underwater setting chute, which are seabird deterrents determined by the analysis to: (1) be less effective than either the current required measures or the deployment of fishing lines by side-setting, and/or (2) have significant operational drawbacks and/or are expensive, unenforceable, or not easily available. We are also concerned that neither list includes the use of thawed, blue-dyed bait or strategic offal discard. For the short-tailed albatross, therefore, these lists of options do not meet the terms and conditions of current biological opinions (USFWS 2000 and USFWS 2001) on the effects of the Hawaii-based longline fishery on this endangered species. We suggest that you consult with the U.S. Fish and Wildlife Service (Service) Honolulu field office to correct this deficiency in the analysis.	The Preferred Alternative in the FEIS would require use of more interaction avoidance measures than did the Preliminary Preferred Alternative in the DEIS, unless an operator opted to use side-setting. This is intended to encourage the use of side-setting. The USFWS's 2004 Biological Opinion for the shallow-set sector of the fishery requires the phasing in of side-setting or of measures equal or greater in effectiveness in deterring seabirds in the Hawaii-based fleet. The specifications for side-setting outlined in this EIs and in the USFWS's 2004 Biological Opinion include use of 60 g weights.

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	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	c	Side-setting and Alternative SB10B: Based on available information, and as described in the DEIS (*e.g.*, see pp. iii, 49-50, 59, 214, 228-229), deployment of fishing lines by side-setting is the most promising deterrent that has been tested in the Hawaii-based longline fishery, and this measure meets other important criteria as well as effectiveness. It appears from this information that it is relatively easy to deploy lines by side-setting, and it requires only a relatively small, one-time investment to refit a vessel for side-setting. Deployment of line by side-setting is less dependent on crew behavior than most other deterrents, increases efficiency by moving gear deployment to the same location on the boat where gear retrieval takes place, and allows compliance enforcement to take place dockside, because vessels are highly unlikely to refit for stern-setting while at sea. The primary concern expressed about side-setting is that the use of 60 g weights on monofilament line poses an element of danger to crew (if, for example, the leader snaps). Nevertheless, as stated on page 49 of the DEIS, "it is estimated that about 70 percent of the vessels currently fishing in Hawaii already use 60 g weighted swivels[,]" and so this aspect of the side-setting specifications is not new or unusual. The Department finds that deployment of fishing lines by side-setting may be (1) a reasonable and prudent means of minimizing the risk of incidental take of the short-tailed albatross and a potential replacement for some or all of the currently required deterrent measures, and (2) an efficient means of reducing injury and mortality of other seabirds, notably the black-footed and Laysan albatrosses, in the operations of the Hawaii-based longline fishery.	The Preferred Alternative in the FEIS would require use of more interaction avoidance measures than did the preliminary Preferred Alternative in the DEIS, unless an operator opted to use side-setting. This is intended to encourage the use of side-setting. The USFWS's 2004 Biological Opinion for the shallow-set sector of the fishery requires the phasing in of side-setting or of measures equal or greater in effectiveness in deterring seabirds in the Hawaii-based fleet.

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				We understand that side-setting may be physically impossible on a few vessels in the Hawaii-based longline fleet, because of the boats' designs, although we do not know whether NMFS has determined how many vessels fall into this category. In these cases, under Alternative SB10B, the current suite of required seabird deterrents would remain in place, perhaps with some modifications (*e.g.*, for strategic offal discards, as described below under SPECIFIC COMMENTS).	
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	d	Available information about effectiveness of seabird deterrents in Hawaii-based longline fishery is based almost entirely on five experimental studies that varied greatly in sample sizes, methodology, and the deterrents tested. Therefore, we recommend that a side-setting requirement as described under Alternative SB10B, employing specifications described in Gilman *et al.* (2003), be implemented for one or two seasons and monitored in detail in an adaptive management component to answer questions including, but not restricted to, the following: • Do albatrosses learn to approach longline vessels broadside while they are underway and while fishing lines are being deployed by side-setting? • Do a vessel's heading and speed with respect to wind direction and speed influence the ability of birds to approach and make attempts to grab bait during side-setting? • Is side-setting consistently effective with variations in gear type, bird abundance, location, and season? We hope that deployment of lines by side-setting will prove	The USFWS's 2004 Biological Opinion required NMFS to further investigate and report on the effectiveness of side-setting. Vessels that have voluntarily converted to side-setting are being monitored through NMFS' Hawaii Longline Observer Program, including 100% coverage of shallow-setting vessels. Optimization of the technique is expected to result as experience is gained. Observers are expected to note changes in seabird behavior with respect to approaching the hull to take bait.

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				to be a highly effective means of reducing seabird interaction with the Hawaii-based longline fishery over time and across the fishery, with or without modifications based on lessons learned during initial implementation.	
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	e	Limiting required use of seabird deterrents north of 23ºN: We do not know of any biological justification for limiting required use of seabird deterrents (and hence the effort to reduce seabird takes) in the Hawaii-based longline fishery to a particular geographic subset of the area where the fishery operates. Data collected at sea by NMFS observers aboard Hawaii-based longline vessels indicate that Laysan and black-footed albatrosses do occur south of 23ºN (see maps on DEIS p. 120) and that fishery interactions with albatrosses occur south of 23ºN (see maps on DEIS p. 126 and 130-131). In addition, the DEIS does not offer any specific rationale for the alternatives that limit required deterrent use to north of 23ºN other than that albatrosses are "concentrated" to the north (*e.g.*, DEIS p. 210). We agree that observer data indicate that albatross abundance attenuates with decreasing latitude in the area where the fishery operates, and we agree that the short-tailed albatross has not been observed in Hawaii south of Kauai. In 2000, Both NMFS and the Fishery Council accepted the southernmost sighting of the short-tailed albatross as a logical limit for terms and conditions in the Service's 2000 biological opinion, to minimize the incidental take of this endangered species. The same logic should apply here. Given the goal of this management action is "to reduce the potentially harmful effects of fishing by Hawaii-based longline vessels on all seabirds" (DEIS p. v), and Laysan and black-footed albatrosses are the species that most commonly interact with Hawaii-based longline operations, the use of seabird deterrents should be required as far south as the southernmost	The rationale for this limitation is further addressed in Section 2.1.6 of the FEIS. Interactions below 23˚N are expected to remain inconsequential to albatross populations. Under the Preferred Alternative, vessels electing to shallow-set would be required to employ interaction avoidance measures wherever they fish. Vessels deep-setting would be required to deploy a tori line in addition to the currently required suite of interaction avoidance measures when fishing north of 23°N..

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				observation of albatrosses. The Department understands that quantitative comparisons of albatross interaction rates with latitude are forthcoming from NMFS, but such analyses will not make self-evident any reasons for not mitigating seabird interactions south of 23ºN – especially when no seabird deterrent method is known to be 100 percent effective under normal fishery conditions. In light of NMFS' stated overarching goal for the seabird management action under analysis, and because NMFS documents interactions between the fishery and albatrosses south of 23ºN, we cannot support any of the alternatives that include this geographic limitation.	
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	f	**SPECIFIC COMMENTS** p. v. – Issues to be Resolved, third paragraph: "Adequate abundance data for nonbreeding and subadult seabirds is lacking, inhibiting conclusions about long-term population trends." The Department does not believe that resolving the long-term population trend questions of the species' biology would change the necessity of reducing or eliminating incidental take of albatrosses in commercial fisheries. We do agree, though, that the revised FEIS should discuss alternatives which include data acquisition and which will improve our understanding of the demography and population trends in Laysan and black-footed albatrosses (and several data analysis and modeling efforts are currently underway to address this need);	As noted in Section 3.6.1.1.2, there are several population modeling efforts underway, but unfortunately results are not yet available. The status of seabird populations does not effect the analysis of alternatives for the seabird action.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	g	p. v. – Areas of Controversy, second paragraph: "Use of the black-footed albatross as a proxy in modeling the short-tailed albatross population has been criticized in the scientific literature as inappropriate." The short-tailed albatross population has been modeled using data on short-tailed albatrosses (*e.g.*, Sievert 2004), not black-footed albatrosses. However, the Service has used data on black-footed albatross takes in the fishery and the total black-footed albatross population in our biological opinions as	The issue has been deleted.

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				proxy information for estimating the incidental take of the short-tailed albatross by the fishery. The Endangered Species Act (ESA) Section 7 Consultation Handbook recommends the practice of using documented effects of an action on appropriate surrogate species to estimate the effects on a listed species that is rare or on which the effect of the action is otherwise difficult to detect (Service and NMFS 1998). The Department believes that the black-footed albatross is an appropriate surrogate species to use for estimating the effects of the longline fishery on the rare and endangered short-tailed albatross.	
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	h	p.1. – 1.1, Statement of Purpose and Need for the Action, Paragraph 4, Sentence 1: The DEIS states: "Two disparate actions with unrelated objectives affecting two fisheries currently prosecuted under different authorities are assessed in this document." Please clarify this sentence by using deliberate statements. We suggest this type of clarification: "The DEIS evaluates two proposed actions relative to the Pelagics FMP. The first action pertains to seabird interactions with the Hawaii long-line fleet; the second action pertains to the management of the high seas squid fishery." We recommend the DEIS be revised to clearly state the proposed actions.	The description has been reworded.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	i	p.3. – 1.2, Pelagic Fisheries Management in the Region, Paragraph 4, Sentence 1: The DEIS states: "The Pelagics FMP establishes policies for fisheries for PMUS within or landing catches in ports in the EEZ of the U.S. surrounding the State of Hawaii, the Territories of American Samoa and Guam, CNMI, and several islands and atolls that are U.S. possessions under direct Federal jurisdiction (collectively referred to as the Pacific Remote Island Areas, or PRIAs)." These possessions include Howland Island National Wildlife Refuge (NWR), Baker Island NWR, Jarvis Island NWR, Palmyra Island NWR, Kingman Reef NWR, and Johnston Island NWR. The Department recommends the DEIS identify these possessions as NWRs, under the jurisdiction of the Department's U.S. Fish and Wildlife Service. Wake Atoll is jointly administered	The status of these possessions as NWRs has been added.

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				by the Department of the Interior's Office of Insular Affairs and the Department of Defense.	
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	j	p. 5. – Paragraphs 1 & 2. Please insert a line between the first and second paragraphs.	The line has been added.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	k	p. 5. – 1.2.2., The Magnuson-Stevens Act and The Fishery Management Council, Paragraph 2, Sentence 1: The DEIS states: "Using the tools provided by the MSA, NOAA Fisheries assesses and predicts the status of fish stocks, ensures compliance with fisheries regulations and works to reduce wasteful fishing practices." Due to variability in the current science of fisheries stock assessments, we recommend this sentence in the DEIS be revised to: "Using the tools provided by the MSA, NOAA Fisheries assesses and attempts to predict the status of fish stocks, ensures compliance with fisheries regulations and works to reduce wasteful fishing practices."	The recommendation has been noted.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	l	p.12. – 1.2.4.3, ESA Section 7 Requirements, Paragraph 2, Sentence 3: The DEIS states: "For sea turtles, NOAA Fisheries must be consulted; for seabirds, the USFWS [Service] is the lead agency." To clarify, NOAA Fisheries and the Service share dual responsibility for consultations on sea turtles under section 7 of the ESA. Therefore, we recommend the FEIS state "For sea turtles, NOAA Fisheries should be contacted when the action affects sea turtles in the ocean and the USFWS should be contacted when the action affects sea turtles on land (i.e., nests); for seabirds, the USFWS is the lead agency."	The clarification has been added.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of	m	p. 13. - 1.2.4.3, ESA Section 7 Requirements, Paragraph 3, Sentence 1: The DEIS states: "In recent years, consultations between NMFS and the USFWS pursuant to section 7 of the ESA have produced BiOps that have shaped the management regime for fisheries conducted under the Pelagics FMP." The	The NMFS is the official name of the agency. NOAA Fisheries is a common name intended to strengthen the linkage with the parent agency. The formal name of the agency has

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		the Interior		interchangeable use of "NOAA Fisheries" and "NMFS" is very confusing for the reader. Please revise the FEIS using one name and acronym for this agency throughout the document for consistency purposes.	been used throughout the FEIS.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	n	p. 44-50. – 2.1.1., Potential Methods to Reduce Longline-Seabird Interactions and Their Consequences: The Department generally agrees with the evaluation of individual deterrent methods presented in this section (see exceptions in the comments below), and summarized in Table 2.1-2 on p. 53. Unfortunately we do not believe this reasoned evaluation is translated accordingly in the preliminary preferred alternative, which includes as options deterrents that have the least favorable ratings for effectiveness, operational efficiency, cost, and compliance enforcement. We recommend that the least environmentally practicable alternative currently identified in the DEIS be selected as the preliminary preferred alternative in the FEIS, based on the results of the evaluation presented in the DEIS.	We are not sure why you prefer the least environmentally practicable alternative. In any event, the Preferred Alternative in the FEIS replaces the Preliminary Preferred Alternative in the DEIS.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	o	p.44. – 2.1.1.1, Blue-dyed and Thawed Bait: The relative merits of thawed bait were not considered in this section or anywhere in the DEIS. We agree that the scant data on the effectiveness of blue-dyed fin fish bait in the Hawaii-based fishery is equivocal (see McNamara *et al.* 1999 and Gilman *et al.* 2003). Furthermore, dye trials in New Zealand indicated that pilchards and sanma, both of which fall under the definition of "mackerel-type baits" that are or may be used in the Hawaii-based fishery, hold dye less well than squid bait (G. Lydon, New Zealand SeaFIC, pers. comm. 2004), which now is prohibited in this fishery. Thawed bait, however, probably has some deterrent effect in that it sinks faster than frozen bait (E. Gilman, Blue Ocean Institute, pers. comm. 2004). Given the likely positive deterrent effect of thawed bait, and the unclear but perhaps neutral or positive deterrent effect of blue dye, the Department does not support dispensing with the "thawed, blue-dyed bait" in the Hawaii-based longline fishery, unless a demonstrably more effective deterrent, such	We have no data on the efficacy of thawed bait. We do know it reduces bait retention and therefore fishing efficiency. The Preferred Alternative in the FEIS would require use of more interaction avoidance measures (including thawed, blue-dyed bait) than did the Preliminary Preferred Alternative in the DEIS, unless an operator opted to use side-setting. This is intended to encourage the use of side-setting. The USFWS's 2004 Biological Opinion for the shallow-set sector of the fishery requires the phasing in of side-setting or of measures equal or greater in effectiveness in deterring seabirds in the Hawaii-based fleet.

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				as side-setting, is required in its place. We recommend in the FEIS, as in Alternative SB10B, thawed bait be retained as a useful seabird deterrent in the Hawaii-based fishery and that blue-dyed bait be retained as a seabird deterrent as well, at least until more definitive information about the effectiveness of blue-dyed fin-fish bait in this fishery is obtained.	
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	p	p.44-45. – 2.1.1.2, Strategic Offal Discard: The DEIS suggests here and elsewhere that a potential liability of this method is that it may attract seabirds that otherwise would not approach longline vessels, and seabirds may thus become habituated to seeking food at specific vessels that discard offal. Swordfish caught by Hawaii-based longline vessels are gutted and have their heads and tails removed on deck prior to being frozen, and blood and bits of flesh are washed into the ocean (Sean Martin, Hawaii Longline Association, pers. comm. 2004). Swordfish-target vessels thus attract albatrosses, which have a well-developed sense of smell, regardless of whether strategic offal discard is practiced or not, and probably attract them at a greater rate than tuna-target vessels (tuna are only minimally dressed prior to freezing). Swordfish longline fishing typically takes place farther north than most tuna longline fishing, in areas where concentrations of albatrosses are greatest, but tuna-target vessels also do encounter and interact with seabirds. Therefore, strategic offal discard may be an important seabird deterrent for swordfish vessels, and to a lesser extent for tuna vessels, *when seabirds are present.* The Department does not support dispensing with this deterrent in the Hawaii-based longline fishery unless another more effective deterrent is put in its place, but suggest that the requirement be modified such that strategic offal discard be practiced when seabirds are present during the setting or haulback of longline gear.	The Preferred Alternative in the FEIS would require use of more interaction avoidance measures (including strategic offal discard when birds are present) than did the preliminary Preferred Alternative in the DEIS, unless an operator opted to use side-setting. This is intended to encourage the use of side-setting. The USFWS's 2004 Biological Opinion for the shallow-set sector of the fishery requires the phasing in of side-setting or of measures equal or greater in effectiveness in deterring seabirds in the Hawaii-based fleet.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental	q	p.47. – 2.1.1.6, Towed Deterrent: Tori lines (paired or single streamer lines) have been determined to be a highly effective seabird deterrent in Alaska-based hook-and-line fisheries, and use of tori lines is	The Preferred Alternative in the FEIS would require use of tori lines in addition to all of the currently required seabird interaction

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		Officer, U.S. Department of the Interior		required on most vessels in those fisheries (USFWS 2003). The effectiveness of tori lines varies among fisheries, however, and is dependent on fishery-specific research and on precise design specifications and implementation (*e.g.*, see Melvin *et al.*, in press; Kim Rivera, NMFS, personal communication, 2004). The results of experimental tests in the Hawaii-based fishery indicated that tori lines were not as effective as other seabird deterrent measures (McNamara *et al.* 1999, Boggs 2001; see DEIS Table 2.1-1, p. 51), and these studies did not lead to consideration of tori lines for inclusion in the terms and conditions of the first Service biological opinion to minimize the incidental take of the endangered short-tailed albatross by the Hawaii-based longline fishery (USFWS 2000). Therefore, the Department recommends that tori lines not be included as an optional seabird deterrent in the Hawaii-based longline fishery (as indicated for shallow-setting vessels in Alternative SB7C), unless they are used in addition to other more effective deterrents such as night-setting, and/or a line shooting machine with weighted branchlines.	avoidance measures unless an operator opted to use side-setting. This is intended to encourage the use of side-setting. The USFWS's 2004 Biological Opinion for the shallow-set sector of the fishery requires the phasing in of side-setting or of measures equal or greater in effectiveness in deterring seabirds in the Hawaii-based fleet.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	r	p.48. – 2.1.1.7, Night-Setting: We agree that data from experiments indicate night-setting is an effective deterrent, but caution that its effectiveness is highly variable and may be influenced by the amount of deck lighting used, the ambient light (*e.g.*, as affected by moon phase, cloud cover, and timing of the set with respect to sunset), and perhaps by the use of light sticks. Experimental tests of night-setting have not been controlled for light variables (other than sunset) and, similar to most other deterrents, night-setting implemented in the fishery have not been monitored long enough to yield data with which to assess its performance over time and in response to a range of normal fishing conditions. Therefore, the Department recommends the discussion of operational characteristics in the FEIS acknowledge these deficiencies in our knowledge about the effectiveness of night-setting.	Night-setting will add to the effectiveness of other measures required of the shallow-set sector of the fishery, but it will not be relied upon as the primary measure in any combination. Reinitiation of the shallow-set sector of the fishery will be done with 100% observer coverage, which will allow much better documentation of the efficacy of interaction avoidance measures in actual fishing situations than has been possible in the past.

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				The DEIS (p. 48) cites a 93 percent reduction in albatross contacts with gear during night-setting when compared with setting during the day, without deterrents, and a 98 percent reduction in captures of albatrosses when night-setting. The reduction rates cited here and in Table 2.1-1 for night-setting apparently are for Boggs' data as "normalized for bird abundance" by Gilman *et al.* (2003), a process for which no methods or formulae are provided or cited either in the DEIS or in Gilman *et al.* (2003). The citation in the DEIS for the night-setting reduction rates of Boggs' 2002 experiments is "Boggs 2003," but there is no corresponding reference in the "Literature Cited" list, or any other reference for these experiments. The citation for these "normalized" rates probably should be "Gilman *et al.* 2003." The reduction in contact rates (compared with the daytime setting control) found by Boggs (2002) for night-setting *without blue-dyed squid bait* were 84 percent (black-footed albatross) and 83 percent (Laysan albatross). The Department recommends these original data be used and cited in the FEIS.	Chapter 7, Literature Cited, has been revised. A discussion of normalization for bird abundance has been added.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	s	p.54. – 2.1.2, Combinations of Methods for Reduction of Longline-Seabird Interactions, Combination 1: Blue-dyed and thawed bait with strategic offal discard: The blue-dye trials were conducted by Greg Lydon of the New Zealand Seafood Industry, and the appropriate citation for this work is: "Greg Lydon, New Zealand SeaFIC, personal communication, 2004."	The suggested change has been made.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	t	p.58. – 2.1.2, Combinations of Methods for Reduction of Longline-Seabird Interactions, Summary: It is stated that, "[i]n general, combinations involving side-setting faired [*sic*] best, but every combination had liabilities of one sort or another." We note that none of the liabilities relate to side-setting per se, but instead relate to the other methods in the combination, or to conflicts presented by the combination itself, and we recommend that the statement quoted above be qualified accordingly in the FEIS.	The suggested change has been made.

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7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	u	p. 59-69. – 2.1.2, Combinations of Methods for Reduction of Longline-Seabird Interactions, Summary, and 2.1.3, Alternatives for Reduction of Seabird Interactions in the Hawaii-based Longline Fishery Including a Preliminary Preferred Alternative: Three general conclusions about the possible deterrent combinations are offered on p. 59: (1) side-setting appears to be the single best deterrent measure, (2) the currently required measures provide a good default package of deterrents for vessels that are physically not able to deploy line by side-setting, and (3) blue-dyed bait and strategic offal discards should be eliminated from the currently required deterrents. We strongly agree with the first conclusion and agree generally with the second conclusion, based on the available data. The Department does not agree with the third conclusion (as described above, under "Blue-dyed and Thawed Bait" and "Strategic Offal Discard"). The first two conclusions lead logically to Alternative SB10B, and not Alternative SB7C, the preliminary preferred alternative. The longline fishery based in Hawaii has hosted ground-breaking research on seabird deterrents. The information generated by this research can lead to the testing and adoption of effective seabird deterrent methods by non-U.S. longline fisheries operating in the North Pacific. In order for this to happen, however, fishery managers need to apply the results of this research and help to facilitate the use of these deterrents in the Hawaii-based fishery. We also recommend that logbooks be required to record interactions with protected species. Therefore, taking into consideration the comments offered above under Side setting and Alternative SB10B (DEIS), the Department recommends the adoption of Alternative SB10B as the preferred alternative.	The Preferred Alternative in the FEIS would require use of tori lines in addition to all of the currently required measures unless an operator opted to use side-setting. This is intended to encourage the use of side-setting. The USFWS's 2004 Biological Opinion for the shallow-set sector of the fishery requires the phasing in of side-setting or of measures equal or greater in effectiveness in deterring seabirds in the Hawaii-based fleet. Logbooks are required in the fishery.
7	10/15/2004	Patricia Sanderson Port, Regional	v	Pg 72. – 2.2.1, Alternatives for Management of the Squid Jigging Fishery under the MSA, Paragraph 2, Sentence 2: The DEIS states "Replace HSFCA logbooks currently used	Logbooks currently are required under the

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		Environmental Officer, U.S. Department of the Interior		with logbooks specifically designed for squid harvesting, and require operators of squid vessels permitted under the HSFCA to also include any EEZ fishing activities in this logbook." It is unclear whether the proposed action would require fishers to use logbooks in international waters, as well as the EEZ. Also, it is not clear whether the logbooks are designed to record accidental impacts to protected species (*e.g.*, seabirds, sea turtles or marine mammals) as a result of squid fishing-related operations. We recommend the FEIS discuss efforts to document bycatch events, should squid fishery operations result in injuries or mortalities to protected species, within the EEZ and in international waters.	HSFCA and would continue to be required under any of the squid fishing alternatives. The content of the logbooks would be improved to include information about protected species interactions.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	w	Pg.91. – 3.4.5, Bycatch in the Squid Jigging Fishery, Paragraph 3, Sentence 6: The DEIS states: "Because of the bright lights used on the vessels, there have been concerns about birds becoming disoriented." This statement is not preceded with a thorough description of the squid fishery, proposed to occur within the vicinity of the Hawaiian archipelago. Therefore, it is problematic for the Department to evaluate the degree to which lighting, or other sources of disturbance could negatively impact protected species. We recommend the FEIS discuss potential squid fishing-related lighting disturbances and affects to seabirds.	An additional section has been added to address this issue.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	x	Pg.173. – Jigging: A description of squid fishing techniques and gear types would assist the reader to better understand the alternatives analyses discussion and we recommend that a good description of these techniques and gear types be included in Chapter One of the FEIS.	This description appears in Chapter 3.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	y	**SUMMARY COMMENTS** In summary, the Department believes the DEIS is deficient in its analyses of potential squid fishing-related impacts to protected species (*e.g.*, sea turtles, marine mammals, and seabirds). The FEIS should be revised to provide improved analyses of alternatives and potential impacts, and be based on a clear commitment to avoid unnecessary impacts,	There are few data available on the impact of U.S. squid jigging vessels on protected species. We have included what information is available from their logbooks and information from similar operations in other fisheries, but there is no reason to expect

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				minimize unavoidable impacts, and compensate for significant unavoidable impacts.	interactions with protected species based on the type of gear used.
7	10/15/2004	Patricia Sanderson Port, Regional Environmental Officer, U.S. Department of the Interior	z	The results of the analyses of potential seabird deterrents and combinations of deterrents for use in the Hawaii-based longline fishery as presented in the DEIS indicate that side-setting is the most effective and practicable deterrent.	The measures currently in place have been shown to be effective in minimizing seabird interactions, and the Preferred Alternative has the potential to further reduce the effects of the fishery on seabirds. The Preferred Alternative encourages the use of side-setting. While side-setting has been shown to be effective in limited experimental situations, its efficacy in practice has yet to be established. It seems prudent at this time to proceed cautiously until adequate experience in the fleet confirms its efficacy and operational benefits.
				The Department is concerned that the preliminary preferred alternative does not reflect this conclusion. Moreover, this alternative includes two deterrents, tori lines and the underwater setting chute, that are shown by the analysis to be less effective and/or less practicable than side-setting, and it includes a geographic limitation on the required use of seabird deterrents in the tuna fishery.	The Preferred Alternative in the FEIS would require use of tori lines in addition to all of the currently required measures unless an operator opted to use side-setting. Underwater setting chutes are not an option in this alternative. The existing geographic limitation on the requirement for deep-set tuna vessels to use seabird interaction avoidance measures south of 23°N is maintained. Interactions in the deep-set fishery south of 23°N are relatively rare, on the order of one interaction per vessel per year. The analyses in this EIS do not suggest a need for additional controls on the deep-set tuna fishery operating south of 23°N.
				The preliminary preferred alternative does not correspond with NMFS' stated overarching goal for this management action. We recommend that the preferred alternative reflect NMFS' stated goals and the results of the analysis in the FEIS. Please address our comments to the FEIS accordingly.	The alternatives in the FEIS were evaluated according to a set of qualitative and quantitative criteria designed to support NMFS' preferred strategy of minimizing the longline-seabird interaction rate in the Hawaii longline fishery to achieve the action objective.

6.5 Changes to the DEIS

A great number of people contributed to preparation of this document. In particular, Fishery Management Action Teams (FMAT) were formed for the seabird and squid actions consisting of NMFS staff from California and Washington D.C., as well as Honolulu staff from PIRO, PIFSC, WPFMC, USFWS and consultants. After review of the draft document by the FMAT, a number of changes were suggested and made to improve the document that were not precipitated by specific public review comments. These changes are listed below.

1. Miscellaneous corrections, clarifications and updates were made throughout.
2. The meanings of terms deterrent, mitigation and avoidance measure were clarified.
3. The Preferred Alternative for the seabird action was modified from that in the DEIS to reflect the position of the USFWS with respect to use of thawed, blue-dyed bait and strategic offal discard, and to add tori lines to the suite of required current measures.
4. The definitions of the squid action alternatives were amended to include placement of observers on high seas jigging vessels.
5. Text was clarified to indicate that two small coastal squid jig fisheries are included in the squid fishery management action.
6. References to the seabird action objective were clarified for consistency.
7. Consideration of the Data Quality Act was added to Section 1.2.2.
8. A description of the USFWS October 8 2004 BiOp for the shallow-set sector of the fishery was added to Section 1.2.4.4 and Table 1.2-3.
9. Section 1.6 (Scoping Process) was moved to Chapter 6 (Section 6.2) and a subsection added to provide the rationale for EIS production.
10. An introductory section was added (2.1.1) to describe the possible strategies to accomplish the seabird action objective and clarify the strategy adopted.
11. Section 2.1.2 was added to introduce the criteria used to evaluate the seabird alternatives. Figures 2.1-1 and 2.1-2 were deleted in favor of a qualtitave discussion of trends.
12. The discussion of seabird handling techniques and the protected species workshop were moved out of "potential measures" as they are unaffected by the present action.
13. Subsections of Section 2.1.3 were reorganized and supplemented to reflect the four evaluation criteria.
14. Figures showing tori line components and side-setting were added.
15. A complete description of the current regulatory requirements for use of seabird interaction avoidance measures was added to the description of Alternative SB1 (No Action).
16. A discussion was added of the appropriateness of using 23°N as a boundary for the application of seabird deterrent measures.
17. Section 2.1.6 (alternatives considered but rejected for seabirds) was expanded to better discuss the rationale for not proposing time or area closures.
18. The most recent and complete information on seabird take rates for deep, shallow, north and south categories.
19. A new section was added to explain how quantitative seabird deterrent efficacy values were calculated for use in projecting seabird captures when measures were combined in the alternatives.
20. A table was added summarizing projected seabird captures under each alternative.
21. Summaries of the status of some PMUS stocks were updated with information presented

at SCTB 17.

22. The regression analyses used to project the population trajectories for black-footed and Laysan albatrosses in the DEIS (Sections 3.6.1.1.2 and 3.6.1.1.3) were deleted in favor of a qualitative discussion of the uncertainty of those trends.
23. Population size estimates for Laysan and black-footed albatross were updated with the latest USFWS numbers.
24. Figure 3.6.1-5 was added to graphically illustrate the estimated seabird captures by the fleet since initiation of the observer program.
25. Section 3.4.5 was augmented with information from bycatch in other squid jig fisheries.
26. Information about marine mammals was reduced in scope.
27. A summary of the historical observations of interactions of the longline fleet with marine mammals was added.
28. The introduction to the discussion of the impacts of the seabird action alternatives (Section 4.5) was augmented to include a discussion of factors that could either increase or decrease seabird captures from those projected.
29. Quantitative estimates of seabird interactions under each alternative were either added or revised in Section 4.5.
30. A section (4.5.27) was added to discuss the impacts of squid fishing on seabirds.
31. Sections 4.8.1.1 to 4.8.1.25 were revised to provide quantitative estimates of the economic impacts of each seabird alternative.
32. Section 4.11 (Cumulative Impacts) was revised to more obviously reflect the stepwise methodology employed.
33. A section (4.12) was added to summarize the impacts of the seabird and squid fishery management alternatives.
34. This section summarizing changes between the DEIS and FEIS was added.
35. Extensive corrections were made to the literature cited (Chapter 7).
36. Appendix D on the distribution of fishing effort in the longline fleet was added.
37. Appendix E was added containing all comment letters received on the DEIS
38. Appendix F was added.
39. Index was added.